

today's economy. No other program provides these benefits to small businesses * * *. By virtue of its structure, providing a financing package that requires participation of a private sector lender, federal resources are leveraged. The program has always been available, regardless of economic cycle, and provides a high level of security to the participating private sector lender. This security is even more critical in a down economy and may mean the difference between financing with 504 or no financing available.

Other economic development benefits to the local communities from the CDC Program in addition to the long-term, fixed-rate financing are mentioned by many writers. One writer stated that:

To the extent that there are surplus reserves or revenues, they should be employed to accomplish our primary objective, the 504 Program, either through increased marketing in our existing area of operations or in a new, underserved market. Secondly, surpluses should be utilized for needed local economic development activities. We believe that was the intent, resulting in a separate CDC program and industry in the first place.

Another writer echoed the larger economic development goals of CDCs:

The 504 program has been the genesis for the creation of many other forms of local economic development and job creation. Unlike commercial lenders who distribute profits to shareholders, CDCs invariably invest, either directly or through affiliated companies, into their areas of operations. This was the basis for congressional creation of the 504 Program. 504 Program revenues have led to creation of new local revolving loan funds, economic development grant programs, job training programs, micro-loan programs, and many other small business assistance programs provided by CDCs. All of these programs are targeted at the intent of Congress: job creation in local communities.

There also was overwhelmingly negative response from banks, 504 borrowers, and CDCs to the questions about permitting a CDC to establish a 7(a) lender or permitting a 7(a) lender to establish a CDC. One writer explained that:

The Development Company Loan program * * * was created by Congress to be an economic development tool, and measured the success by jobs. The 7(a) program was created by Congress to assist small businesses with capital not available from other resources, or the "lender of last resort." The 7(a) loan program may and probably does create jobs * * *

but no economic development goal is required for a 7(a) loan to be approved. Another writer summarized his opposition as follows:

7a lenders, due to their for-profit structure, have significantly different goals and objectives that are often in conflict with the economic development goals of the non-

profit CDC industry. The independence of CDCs is critical to the maintenance of their unique economic and community development mission * * *. The primary objective of the development company must be of benefit to the community as measured by increased employment, payroll, business volume, and corresponding factors rather than monetary profits to its shareholders * * *. CDCs help to create a level playing field between large and small banks by providing expertise to small and rural banks that cannot afford in-house SBA lending departments.

Another writer adds that:

CDCs should build strength with adequate capital reserves just like any good business. We certainly expect it of our borrowers. To the extent that there are surplus reserves or revenues, they should be employed to accomplish our primary objective, the 504 Program, either through increased marketing in our existing area of operations or in a new, underserved market. Secondly, surpluses should be utilized for needed local economic development activities. We believe that was the intent, resulting in a separate CDC program and industry in the first place * * *. Not only is the 7(a) program not economic development, a conflict could occur as a result of such an affiliation.

In summary, the comments supported the continuation of the 504 Program. The comments also suggested some policy changes to the 504 Program to permit increased access to capital for small businesses. The most frequently suggested changes dealt with the structure of CDCs, including their designated areas of operations. These suggestions included liberalizing the rules governing a CDC's membership requirements, changing the definition of a CDC's area of operations, and changing the definition of when a county is adequately served by existing CDCs. The comments also supported the distinct economic development aspect of the 504 Program by overwhelmingly opposing a CDC's investing in or being affiliated with a 7(a) lender.

Overview of Proposed Changes to the 504 Regulations

SBA believes the proposed regulatory changes will improve 504 Program delivery to small business customers by increasing customer choice of service; increase third party lender choice of CDCs; facilitate the formation of new CDCs; facilitate the expansion of existing CDCs; and increase the number of CDCs able to take advantage of special initiatives for rural areas. By allowing market-driven forces to determine availability of 504 Program service, small businesses will have greater opportunity to negotiate the best total financing package including fees, as well as receive increased service by CDCs. In addition, the 504 Program will

be more responsive to changes in market conditions.

To allow for greater delegation of authority to CDCs, this proposed rule includes expanded sections on the ALP and the PCLP. This proposed rule also simplifies and clarifies the enforcement provisions for CDCs. In addition, SBA proposes to amend the "job opportunity average," which will permit CDCs to approve more projects that do not meet the job creation criteria but do meet other statutory goals such as increasing manufacturers' productivity and competitiveness through re-tooling, robotics or modernization. Proposed amendments also clarify the regulations governing fees that a small business may and may not be charged. The regulations covered by the proposed rule are 13 CFR, subpart A, § 120.102 and § 120.140, and subpart H, §§ 120.800 through 120.984.

The 504 Program from 1986 to 2002 has created or retained more than 1.5 million jobs, averaging approximately \$13,600 of debenture per job. However, the 504 Program has not used all of its available budgetary authority for many years. The 504 Program's authorization level for fiscal year 2002, for example, was \$4.5 billion compared to the total approval level of \$2.5 billion.

SBA has decided to take steps to increase the availability of the long-term, fixed-rate financing offered by the 504 Program that is vital for our nation's small business community. This proposed rule begins this process by establishing the State in which a CDC is incorporated as the CDC's minimum area of operations. Currently, each CDC is assigned a specific, local area, typically several counties. Only one CDC per State is permitted to be a statewide CDC. In some cases, there are geographic areas that do not have CDC coverage. Although CDCs' areas of operations often overlap, SBA believes that establishing statewide areas of operations for all CDCs will increase the availability of 504 Program assistance to small businesses. SBA also believes that it is empowering the CDCs' boards to determine what is the optimal area of operations within the State for the CDC to market and service effectively.

Next, SBA is proposing to eliminate the "adequately served" standard. Currently, a county meets the standard of "adequately served" when the CDC that includes the county in its area of operations averages at least one 504 loan approval in that county per 100,000 population per year averaged over two years. In such cases, the county is unavailable both to an existing CDC applying to expand its operations to include that county, and to a new CDC