

will process a CDC's petition for permanent CDC status, and that the probationary period commences on the date of certification. Also SBA proposes to delete all references to ADCs in connection with the proposed elimination of the ADC program (see discussion of § 120.850).

In § 120.820, CDC non-profit status, SBA proposes to describe what SBA means by the term "good standing." While this is a term SBA has used over the years in administering the 504 Program, SBA has not fully defined it previously. Following discussions between SBA program officials and the CDC industry, SBA proposes several criteria that constitute good standing for the 504 Program. SBA intends to apply the term generally to all CDCs.

Section 120.821, CDC Area of Operations, would be revised to delete the limitation of one statewide CDC since all CDCs' areas of operations will be at least statewide (see discussion of definition of "Area of Operations" in § 120.802).

Section 120.822, CDC membership, would be revised to streamline CDC membership qualifications by deleting the requirement that a CDC's membership must be representative of its entire area of operations. Currently, a CDC must have representation from each of the four groups (*i.e.*, government organizations, financial institutions, community organizations, and businesses) for its entire area of operations. With this change, SBA still would require that each of the four groups be represented in the membership, but would no longer require that such members represent the entire area of operations. It will be up to the CDC's board to determine how broadly-based geographically the membership needs to be to meet the CDC's economic development objectives. The CDC's board may choose to have a membership that represents only a county, or some counties, while another CDC's board may choose to have a membership that represents the entire State.

In addition, SBA would clarify the intent of the regulation by adding that a CDC must not use its employees and staff to meet the membership requirements. The membership requirement is designed to be filled by local community leaders volunteering to assist in providing economic development in their communities through the formation of a CDC. The membership elects the CDC's board from among its members. The board, in turn, hires paid professional staff to operate the CDC on a daily basis. SBA also proposes to eliminate the

requirement that SBA pre-approve the CDC's members representing government organizations, and to add small business development companies ("SBDCs") and another type of community organization that may be a source of members for a CDC.

Section 120.824, professional management and staff, would be revised to delete the provision that describes the circumstances under which a rural CDC with insufficient loan volume may be managed by another CDC located in the same area of operations. This provision has not been used and appears to be unnecessary. In addition, the proposed change would clarify the requirements regarding CDC staff provided under contract including deleting the requirement that a contractor must live or do business in the CDC's area of operations. SBA believes that a CDC may wish to contract for certain services, such as "back office" staff support, with individuals or organizations that are outside of the CDC's area of operations.

Section 120.826, basic requirements for operating a CDC, would be slightly reworded for clarity. The responsibilities currently described in § 120.827(a) would be moved to this section because SBA considers them to be basic requirements for operating a CDC. In addition, SBA proposes to clarify that all CDCs must comply with all of the 504 Program requirements imposed by statute, regulation, SOP, policy and procedural notice, loan authorization, debenture, or any agreement between SBA and the CDC, some of which is currently in § 120.827(a).

Section 120.827, other services a CDC may provide to small businesses, would be revised to focus this section only on, and clarify what is meant by, "other services" that a CDC may provide to a small business, as well as describe the regulations to which the CDC will be subject if it does provide such other services.

Section 120.828, minimum level of 504 loan activity and restrictions on portfolio concentrations, would be reworded to clarify the minimum level of 504 loan activity a CDC must maintain. In addition, this section would cover the requirement concerning portfolio concentrations currently contained in § 120.827(a) and the heading to the section would be revised accordingly.

Section 120.829, job opportunity average a CDC must maintain, would modify the job opportunity average a CDC must maintain by changing it to an amount specified by SBA by means of a notice published in the **Federal**

Register. Currently, the average is preventing many CDCs from accepting 504 loan applications from small businesses for loans that would not create jobs but would meet other statutory 504 Program objectives, such as loans to increase business efficiency through technology. In addition, the present ratio has been in effect since 1990 and does not take into account the inflationary factors in the cost of land, real estate acquisition, construction, and machinery and equipment since that time. Finally, SBA is proposing to clarify that a new CDC is permitted two years from the date it is certified to meet the job portfolio requirement.

Section 120.830, reports a CDC must submit, would be revised to change the submission requirement for CDC annual reports from 90 days to 120 days after the end of the CDC's fiscal year to permit CDCs more time to provide financial statements with the required level of review. This proposed rule also clarifies the requirement by adding that the annual report must include financial statements of any affiliate or subsidiary of the CDC. In addition, it would add some clarifying language regarding the submission requirements for changes to directors or staff.

Section 120.835, application to expand an area of operations, would be revised. Most of the applications SBA receives are for expansions of a CDC's area of operations within its State of incorporation. The expansion request usually is for several counties in which there currently are one or more CDCs that include those counties in their areas of operations. Since the proposed rule gives all CDCs a minimum area of operations of the State in which they are incorporated, and since SBA is allowing the marketplace to determine the optimum number of CDCs, much of the current regulatory language is no longer required (refer to § 120.802 and § 120.810 for further discussion). SBA proposes that the only applications for expansion that it would consider would be when the CDC requests to expand beyond its State of incorporation. In this section, SBA also proposes to add the requirement that such applicants must be ALP-qualified. There are two reasons for this. The first is to limit expansions beyond State lines to only those CDCs who have met certain volume, closing, and portfolio quality standards. The second is to reflect the proposed change in the regulations governing multi-state expansions that would permit a CDC to use in the expanded area any unilateral authority it has already received in its State of incorporation (*see* discussion of proposed changes to § 120.837). To further streamline the application