

determined that this proposed rule constitutes a significant regulatory action under Executive Order 12866. SBA believes there is a need for this regulatory action for the reasons stated in the preamble to this proposed rule. 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 business 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. SBA believes that there are no viable alternatives to these changes that would produce similar positive results without imposing an additional burden on SBA or the public. However, SBA requests comment from members of the public who believe there are viable alternatives that would achieve the same objectives with no greater burden.

In FY2002, OMB developed the Program Assessment Rating Tool (PART) to establish a systematic, consistent process for rating the performance of programs across the federal government. The 504 Program was evaluated under the PART criteria in FY2002. The PART review revealed that SBA needs to increase the availability of CDCs within the 504 Program to improve customer access to loans. Additionally, increasing the availability of CDCs will enable borrowers to determine which of SBA's loan programs best meet their needs. SBA expects that this proposed rule will address this recommendation of OMB.

SBA does not have sufficient data to establish a baseline in order to measure the costs and benefits of this proposed rule on the affected public. However, SBA has data on the cost to SBA of the 504 Program. In FY2002, the cost of the 504 Program to SBA was approximately \$15 million. The majority of the cost of the Program, 82% or \$12.6 million, was for the cost of the field office staff support that reviewed and approved loan applications and conducted marketing and outreach to generate new loans. The cost of the 504 Program to SBA also includes the cost of reviewing and analyzing CDC requests to expand their areas of operations by SBA's field office and Headquarters staff. SBA

would expect this cost to decline substantially as a result of this proposed rule because it permits all CDCs to operate at least throughout their State of incorporation. Other data on the program can be found at www.sba.gov. SBA requests data from the public that would enable SBA to determine existing regulatory costs of the program to the public and changed costs and benefits as a result of the proposed rule.

Regulatory Flexibility Act: This proposed rule directly affects all CDCs, of which there are approximately 270. SBA has determined that CDCs fall under the size standard for NAICS 522298, All Other Nondepository Credit Intermediation. The size standard is \$6 million in average annual receipts. SBA estimates that at least 95 percent of the CDCs do not exceed this size standard and are therefore considered small entities by this definition. Thus, SBA has determined that this proposed rule will have an impact on a substantial number of small entities. However, SBA has determined that such impact will not be significant.

The effect of the proposed rule will be to "level the playing field" by allowing CDCs more flexibility to choose the optimal area of operations within their State of incorporation. Currently, each CDC has a specific area of operations that is approved by SBA. The typical area of operations is several counties within the CDC's State of incorporation. If a CDC wishes to apply to expand into neighboring counties, it can only do so if those counties are available. Currently, a county is available to a new CDC or a CDC requesting to expand its area of operations if the CDC(s) that include that county in its area of operations is not meeting a threshold of one 504 approval per year per 100,000 population averaged over two years. If the existing CDC is meeting this threshold of activity, both an applicant wishing to become a CDC and a CDC wishing to expand its area of operations is barred from including that county in their request. The proposed rule levels the playing field by eliminating this threshold and by permitting all CDCs to operate anywhere in their State of incorporation. SBA believes that some CDCs will choose to continue to operate in those counties they presently operate in while others will choose to expand their market area into neighboring counties or throughout the State. It has been SBA's experience with CDCs that are permitted to compete with other CDCs in the same market area, that the market of eligible 504 Loan projects itself expands, resulting in a benefit for the affected CDCs as well as a benefit to small business borrowers.

This proposed rule will also permit new CDCs the opportunity to market in areas that may produce more 504 loans sooner. This in turn will permit the new CDC to reach a breakeven point sooner in its operations and continue to meet the required 504 activity of two 504 approvals per year. Currently it is estimated that it takes a CDC at least two years at a cost of \$200,000 or more to reach the 504 activity level where the 504 fee income covers the CDC's expenses. SBA believes that smaller, rural CDCs will derive a similar benefit by having a greater opportunity to meet the required 504 loan activity level. Since 1993, SBA has had to revoke certifications from more than 100 CDCs and transfer their 504 loan portfolios and fees to other, active CDCs due to their failure to meet the required 504 activity level of two 504 loan approvals per year averaged over two years. Most of these CDCs have been located in rural areas where there are a limited number of potential 504 Loan projects. This proposed rule will enable those small, rural CDCs the opportunity to expand their market area by doing projects in more populous areas, resulting in their more easily meeting the 504 loan activity level. At the same time those CDCs that currently have exclusive areas that include populous urban areas resulting in substantial 504 loan activity may seek to expand their market areas into the less lucrative rural areas. The expected result is that future 504 borrowers will benefit from an increase in choice among CDCs.

In addition, SBA expects the impact of the proposed rule will be a reduction in the overall paperwork burden for CDCs since CDCs will no longer have to apply to SBA to expand their area of operations within their State of incorporation. SBA received and approved approximately 11 expansion requests during 2002. All were for CDCs requesting expansions into neighboring counties within the CDC's State of incorporation. The burden hours for a new CDC or a CDC wishing to expand to complete an application is estimated to be 10 hours. None of the applications for an expansion would have been necessary under the proposed rule. In addition, applicants requesting to become CDCs also will be permitted to establish their optimal area of operations within their State of incorporation without being excluded from areas that currently have one or more CDCs. SBA receives one or two applications to become a CDC per year. The burden hours for an application will be reduced by approximately one hour due to the changes in the general