

SMALL BUSINESS ADMINISTRATION**13 CFR Part 120****RIN 3245-AE41****Development Company Loan (504) Program Changes****AGENCY:** U.S. Small Business Administration (SBA).**ACTION:** Final rule.

SUMMARY: The U.S. Small Business Administration ("SBA" or "the Agency") is amending the Certified Development Company ("CDC") Loan Program (the "CDC Program" or the "504 Program") in order to improve delivery of the 504 Program to small businesses. The most significant regulations changed are those governing a CDC's area of operations; a CDC's organizational structure; the requirements for a new CDC or a CDC requesting to expand its territory; the "adequately served" standard; and whether a CDC may participate in other SBA loan programs. Also, to allow for greater delegation of authority to CDCs, the rule includes expanded sections on the Accredited Lender Program ("ALP"), the Premier Certified Lender Program ("PCLP") and a simplification and clarification of the enforcement provisions for CDCs. The amendments also clarify the regulations governing fees that a small business may and may not be charged.

DATES: This rule is effective November 6, 2003.

FOR FURTHER INFORMATION CONTACT: Gail H. Hepler, Chief, 504 Loan Policy Branch, (202) 205-7530 or, by email, at gail.hepler@sba.gov.

SUPPLEMENTARY INFORMATION:**Rulemaking History**

On July 8, 2003, SBA published in the **Federal Register** a proposed rule (68 FR 40553). The proposed rule took into consideration and was based in part on over 1,900 comments SBA received in response to an Advanced Notice of Proposed Rulemaking ("ANPRM") published in the **Federal Register** by SBA on December 6, 2002. SBA received over 70 comments in response to the proposed rule.

Statutory Basis of the 504 Program

The 504 Program, Title V of the Small Business Investment Act ("Act"), 15 U.S.C. 695, was established by Public Law 85-699 on August 21, 1958. A "development company" was defined as an enterprise formed for the purpose of furthering economic development of its community and environs, and with

authority to promote and assist the growth and development of small business concerns in the areas covered by their operations. The law further stated that a local development company is a corporation chartered under any applicable State corporation law to operate in a specified area within a State and be composed of, and controlled by, persons residing or doing business in the locality. The program was amended in 1980 due to changing business conditions for small businesses. During the late 1970s and early 1980s, the prime interest rate and unemployment rate reached historically high levels. It was generally believed that long-term, fixed-rate money was not available at a reasonable cost to small businesses because of these high prevailing rates and that this was hindering job creation. Congress enacted section 503 of the Act in 1980. The 503 and 504 Programs were intended to provide long-term, fixed-rate financing to small businesses at favorable terms that were unavailable in the commercial marketplace. Congress specified in the Act that this program "foster economic development and create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns * * *". The statute authorizes SBA to guarantee debentures backing long-term, fixed-asset loans ("504 Loans") made by CDCs. It also authorizes SBA to pool the guarantees and sell interests in the pools to investors.

Overview of the Changes to the 504 Regulations

SBA believes the 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 final rule includes expanded sections on the ALP and the PCLP. This final rule also simplifies and clarifies the enforcement provisions for CDCs. In addition, SBA is amending the regulations governing "job opportunity average" to permit

more flexibility to adjust the average in response to increased costs as reflected by such measures as the consumer price index. This change 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. The final rule also clarifies the regulations governing fees that a small business may and may not be charged. The regulations covered by the final 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 final 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 eliminating 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 applying to include that county in its proposed area of operations. In addition, the regulations currently do not permit a new CDC, or a CDC applying to expand its area of operations, to apply for a particular county if that county has become part of another CDC's area of