

commenters; or some even smaller geographic area), SBA is implementing the Statewide minimum. First, SBA does not believe that this necessarily will result in rural areas being neglected, as several commenters suggested. Under the current regulations many such areas are being neglected now, and SBA believes that increased competition among CDCs within a State may result in bringing additional access to capital to those areas, as CDCs focus their efforts on places where they have a competitive advantage.

SBA also does not believe that changing the minimum area of operations to statewide necessarily will result in a dilution of a CDC's role in community and economic development. A CDC will have the discretion to determine over what geographic areas within its State it has the ability, based on its membership, board, and staff, to provide economic development. Local economic development remains one of the goals of projects financed by 504 loans, pursuant to section 502(d)(2) of the Act and § 120.862(a). However, SBA does not believe that a CDC necessarily must operate only in a small geographic area in order to meet the local economic development needs of that area. In addition, the purpose of the 504 Program is not only to foster local economic development, but to meet other goals, such as the public policy goals listed in section 501(d)(3) of the Act and § 120.862(b) which are not dependent on a CDC having a local presence, are even less dependent on a CDC having a local presence.

While SBA agrees that the Agency could introduce competition to the 504 Program within smaller geographic areas than a State, the Statewide minimum will allow SBA to administer the 504 Program more efficiently, given its increasingly limited staff resources. A district-wide minimum area of operations standard would produce a double standard between the 43 States in which all CDCs would be Statewide, by virtue of the fact that there is only one district office in each of those States, and the remaining seven States with multiple districts, which would require additional monitoring by SBA. An even smaller geographic area of operations standard would require an even greater expenditure of SBA's resources to oversee and administer. For these reasons, the final rule publishes the area of operations definition in § 120.802 as proposed.

The definition of "Local Economic Area" also is revised slightly to make it consistent with the revised, statewide "Area of Operations" definition. SBA received several comments that

suggested confusion on the part of the commenters in interpreting what was being changed in the definition. SBA had proposed changes only to the first sentence of the definition. Specifically, SBA did not propose to delete the reference to a "metropolitan statistical area" as an example of a local economic area and, therefore, that reference will continue to be part of the regulation.

SBA received several comments that suggested that SBA did not adequately address whether the revised definition of area of operations would mean that local economic areas adjacent to a CDC's State of incorporation would be included in a CDC's minimum area of operations. SBA did not propose a change to the concept of a local economic area, and the proposed rule expressly states that a CDC must apply to SBA to expand its area of operations into a local economic area (see § 120.835). Some comments were in favor of revising the definition of local economic area or area of operations in ways that would remove or create exceptions to the requirement that a CDC apply to SBA to serve a local economic area; one comment proposed that a CDC's minimum area of operations include all local economic areas adjacent to a CDC's state of incorporation. SBA did not propose to change the definition of local economic area in this way and considers to be beyond the scope of this rulemaking the requirement that a CDC apply to SBA to cover such areas.

The definition for "Associate Development Company" is deleted. This change is discussed in the analysis of revisions for § 120.850. SBA received several comments in support of the proposed change.

Other regulations in Subpart H of part 120 use the terms "Designated Attorney," "Lead SBA Office" and "Priority CDC." For clarification, SBA is adding definitions for those terms. Comments received supported these additional definitions. SBA did not receive any comments objecting to these new definitions.

In § 120.810, application for certification as a CDC, SBA is changing the policies governing new CDC applications to reflect the change in the definition of a CDC's "Area of Operations" to a minimum of statewide. Additionally, it deletes the current restrictions that permit existing CDCs to exclude geographic areas from being considered for a new CDC. SBA is permitting the marketplace to determine the optimum number of CDCs that may be supported. In this section and in several others (for example, § 120.812(d) and § 120.837), SBA proposed to add

the phrase "The procedures of §§ 120.855 through 120.857 do not apply" to the specific action described in the proposed regulation section. Several commenters expressed confusion as to whether SBA was proposing to change existing rights or add new rights to reconsideration or appeal from the SBA action addressed in that regulation. Several commenters also requested that SBA expand these sections further to specifically provide CDCs a right of administrative appeal to SBA's Office of Hearings and Appeals (OHA), under part 134 of SBA's regulations, for each such action.

By adding this phrase to this section and others, SBA did not intend and did not propose to add any new administrative appeal rights to these sections. On the contrary, SBA was attempting to clarify that the expanded SBA enforcement and CDC administrative appeal rights proposed in §§ 120.855 through 120.857 for actions described in § 120.854 specifically would not apply to the sections in which the phrase would appear. Because this appears to have caused confusion rather than provide clarification, SBA's final rule deletes the phrase beginning with "The procedures of §§ 120.855 through 120.857* * *" wherever it appeared in the proposed rule. This results in the preservation of the procedures that currently exist under SBA regulations in subpart H of this part and in §§ 134.102(d) and (f) of this chapter, namely that only in cases in which a right of administrative appeal to OHA is specifically set forth by regulation does such a right exist. As discussed below regarding § 120.856, SBA has added § 120.856(f) clarifying that the procedures in § 120.856 only apply to actions taken by SBA pursuant to § 120.855.

Also, SBA is adding a clarification that an applicant CDC must demonstrate financial capability to meet the upfront costs of the program until the CDC's operations meet the breakeven point. This is to ensure that the CDC will be staffed sufficiently to meet the requirements of marketing, processing, closing, and servicing 504 loans. The added requirement that an applicant must demonstrate financial capability to meet the upfront costs of the 504 Program until the CDC's operations meet the breakeven point should assist in attracting only those applicants committed to devoting adequate resources (refer to § 120.802 discussion on the comments regarding changes to CDC area of operations). Several commenters objected to the proposed rule on the basis that the current "adequately served" concept applicable