

to new applicants, which limits the geographic areas that are available for new CDCs, assists in minimizing the number of processing and closing problems from inexperienced CDCs. SBA considered these concerns but continues to believe that the marketplace should determine the maximum number of CDCs that may be supported by 504 loan activity within a State.

SBA received several comments about the proposed deletion of the requirement in § 120.811 for public notice as well as direct notice to existing CDCs for new CDC applications (as well as in § 120.836 for CDC expansion requests). Several commenters were concerned that the deletion of the requirement for notice to the public and to existing CDCs would not give existing CDCs with knowledge of the community an opportunity to express their opinion about a new CDC application request or a CDC expansion request. SBA considered this concern but decided not to modify the proposed rule.

In SBA's experience, most of the comments received in response to such notice to CDCs and the public have been from existing CDCs concerned about "ruinous competition" that would result from CDC expansion; SBA has received very few comments concerning new CDC applications that have resulted in information that SBA had not already discovered in its own review process. With the new emphasis on competition in the 504 Program as a result of this final rule, the issue of competition resulting from a CDC's expansion will no longer be relevant to SBA's decision.

With regard to decisions on new CDC applications, SBA has an established, effective process for screening and conducting appropriate due diligence and character determinations on the officers, directors, and key staff of an applicant for certification as a CDC. SBA's current process addresses all comments SBA may receive concerning such applicant or any individual associated with the applicant. Eliminating the public notice requirement will not change that process or eliminate SBA's consideration of any comments it may receive. In addition, all new CDCs are subject to a two year probationary period (pursuant to § 120.812), during which time significant, adverse character or other issues relating to the new CDC may come to light (through comments by members of the public or otherwise).

Finally, SBA believes that elimination of the notice requirement will streamline the application process for both new CDCs and for CDC expansions

and decrease the cost and time necessary for a CDC to pursue either type of application. For all of these reasons, the final rule deletes § 120.811.

Section 120.812, probationary period for newly certified CDCs, is revised to clarify how SBA will process a CDC's petition for permanent CDC status, and that the probationary period commences on the date of certification. Also SBA is deleting all references to ADCs in connection with the elimination of the ADC program (see discussion under § 120.850). In this final rule, SBA also eliminates the last sentence in this regulation that the procedures in §§ 120.855 through 120.857 do not apply, for the same reasons discussed above for § 120.810.

In § 120.820, CDC non-profit status, SBA describes what the Agency means by the term "good standing." While this is a term that has been used over the years in administering the 504 Program, SBA has not fully defined it previously. Several comments expressed concern about SBA's ability to analyze a CDC's compliance with laws, including taxation requirements. The comments seem to suggest that SBA should not have the right to consider a CDC's compliance with other laws that govern the CDC when considering whether the CDC is in good standing. SBA disagrees and continues to believe that a CDC's compliance with all laws governing a CDC should be a part of SBA's analysis, as the regulator overseeing CDCs, of whether a CDC is in good standing. SBA has no intention of ensuring that CDCs comply with all laws, but it has the means (through publicly available information, for example) to ascertain when a CDC is not in compliance with tax and other legal requirements. Therefore, SBA adopts § 120.820 as it was published in the proposed rule.

Section 120.821, CDC Area of Operations, is 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 the "Area of Operations" under § 120.802).

Section 120.822, CDC membership, is 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 will still require that each of the four groups be represented in the membership, but will no longer require that such

members represent the entire area of operations. SBA also is eliminating the requirement that SBA pre-approve the CDC's members representing government organizations, and is adding small business development companies ("SBDCs") and other types of community organizations that may be a source of members for a CDC. 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.

Several comments suggested that the regulation may need some clarifying language by stating specifically that the membership groups need not have members that do not represent the entire area of operations. SBA considered these comments but disagrees that further clarification is required. Section 120.822(b) as proposed specifically states that "Members must be responsible for actively supporting economic development in the Area of Operations," and the preamble to the proposed rule SBA clarified that "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." SBA is publishing § 120.822 as proposed.

Other comments suggested that a CDC should be able to use CDC employees in meeting the membership requirements. SBA considered these comments but disagrees. 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 believes that this will preserve objectivity between the CDC's membership, its board, and its staff. Therefore, SBA is publishing in the final rule § 120.822 as it was published in the proposed rule.

Section 120.823, CDC board of directors, is revised to delete the requirement that a CDC that is approved as a multi-state CDC meet the CDC board requirements for each State. SBA did not propose this specific change to § 120.823(b) in the proposed rule. However, SBA did discuss in the preamble to the proposed rule SBA's