

intent to change the requirement currently in § 120.823(b) that a multi-state CDC must meet the board requirements set forth in § 120.823 for each State in which it is authorized to operate (see preamble discussion, "Overview of Proposed Changes to the 504 Regulations," last full paragraph, column one, 68 FR 40556). In addition, this change is consistent with the changes SBA did specifically propose to § 120.835(c) concerning a CDC requesting a multi-state expansion. SBA also received several comments in support of this change. Because this change is consistent with SBA's intent as expressed in the proposed rule and with other changes specifically proposed and is supported by the public, SBA revises § 120.823(b) in this final rule. With this change and the change to § 120.835, a multi-state CDC will be required to meet the loan committee (§ 120.823(b)) and membership (§ 120.822(b)) requirements for each State in which it operates as a CDC, and the CDC's board would need to establish a loan committee in each such State, but would not need to meet the other board requirements (§ 120.823) for each such State.

Section 120.824, professional management and staff, is revised to modify the requirements for when and under what circumstances a CDC can contract for management services. The change clarifies 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.

The comments were generally supportive of this change but several expressed concerns regarding SBA's current requirement that a CDC's manager must be employed directly unless contributed by a non-profit affiliate of that CDC that has the economic development of the CDC's area of operations as one of its principal activities. This is a requirement currently in § 120.824(a)(2) and SBA did not propose to change this requirement; therefore, these comments are beyond the scope of this rulemaking.

Several commenters also objected to SBA's proposed deletion of the exception in the current § 120.824(a)(1) concerning the circumstances under which a rural CDC may contract with another CDC for management services, on the basis that the exception for small rural CDCs is specified by the Act. SBA

recognizes that section 503(e)(2) of the Act allows a rural CDC a waiver if it contracts with another CDC covering the same area. In SBA's experience this waiver provision has never been used. However, SBA will process all rural CDC waivers in accordance with the Act. Therefore, SBA added back to § 120.824 as proposed, a paragraph (a)(2) specifically addressing rural CDCs, to clarify that there is no change to the status quo regarding such waivers for rural CDCs.

SBA also received some comments on the changes to the proposed clarified options of the CDC board's role in hiring and terminating the CDC's manager, either as a direct employee or through a contract when provided by a non-profit affiliate. The comments suggested that there may be other ways that a CDC's manager may be hired or terminated. However, the board of a CDC bears the ultimate responsibility for the CDC and its management and SBA believes it is appropriate to expect the CDC's board to control these decisions. Except for the change discussed, SBA is publishing in the final rule § 120.824 as proposed.

As set forth in the proposed rule, § 120.826, basic requirements for operating a CDC, is slightly reworded for clarity. As also proposed, the responsibilities currently described in § 120.827(a) are moved to this section because SBA considers them to be basic requirements for operating a CDC. In addition, SBA is clarifying 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. Comments generally were supportive of the changes. Therefore, SBA is adopting § 120.826, basic requirements for operating a CDC, as it was proposed.

Section 120.827, other services a CDC may provide to small businesses, is 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. Comments generally were supportive of the changes although a few expressed concern regarding the deletion of the current regulation § 120.827(c) which provides that a CDC may lend to a borrower the amount of the required borrower contribution. SBA had proposed to delete § 120.827(c) because that provision is already included in § 120.912, which is not being amended in this rule and, therefore, is redundant in this section.

Therefore, SBA is adopting the final rule § 120.827 as proposed.

Section 120.828, minimum level of 504 loan activity and restrictions on portfolio concentrations, is reworded to clarify the minimum level of 504 loan activity a CDC must maintain. In addition, this section covers the requirement concerning portfolio concentrations currently contained in § 120.827(a) and the heading to the section is revised accordingly. Comments were generally supportive of the proposed changes, although some expressed concern that CDCs with small portfolios may not be able to meet the portfolio concentration requirements. SBA considered this concern but was not persuaded since this requirement already exists in § 120.827(a) and SBA knows of no CDC that has not met this requirement. Therefore, SBA is adopting the final rule § 120.828 as proposed.

Section 120.829, job opportunity average a CDC must maintain, modifies the job opportunity average a CDC must currently maintain by changing it to an amount specified by SBA by means of a notice published in the **Federal Register**. Currently, the average stated in § 120.829(a) 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 clarifying that a new CDC is permitted two years from the date it is certified to meet the job portfolio requirement. Several commenters were concerned that the change would not give SBA enough flexibility and would eliminate the special circumstances under which a CDC's portfolio could average a higher job per dollar ratio. SBA considered these comments but believes that the rule as proposed does permit flexibility. In addition, the rule has not eliminated the special exceptions. The only thing that will change is the means by which SBA changes the job opportunity average. SBA will revise the average periodically, based on appropriate economic factors, and will publish the revised average in the **Federal Register** as a notice, rather than as a regulatory change. Therefore, SBA has adopted § 120.829 in the final rule as proposed.

Section 120.830, reports a CDC must submit, is revised to change the submission requirement for CDC annual reports to 180 days after the end of the