

CDC's fiscal year to permit CDCs more time to provide financial statements with the required level of review. The final rule also clarifies the requirement by adding that the annual report must include financial statements of any affiliate or subsidiary of the CDC. In addition, it adds some clarifying language regarding the submission requirements for changes to directors or staff. Several comments requested that the submission requirement be increased further than the 120 days SBA had proposed, to 180 days, due to the complicated nature of some audits. SBA considered these concerns and agrees that a longer timeframe may be necessary. Part of the reason to increase the timeframe is that SBA is requiring the financial statements of any affiliates of the CDC. Therefore, to accommodate the more complicated audits, the final rule provides for 180 days.

Several commenters also expressed concern about SBA's proposed change that the financial statement submission includes any affiliates of the CDC. The current regulations define concerns as affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both (see § 121.103(a) of this chapter). SBA is the agency that certifies CDCs and is their sole regulatory oversight agency. As part of its oversight responsibilities, SBA believes that it should review the financial statements of those affiliates that the CDC controls or that may control the CDC, because such affiliates may have some control over the CDC's 504 Program activities even though they may not be involved directly in conducting those activities, or because such affiliates may present issues of potential conflicts of interest with or financial harm to the CDC. Therefore, the final rule concerning financial statement submission requirements adopts the rule as proposed.

Several commenters also expressed concern about SBA's proposed requirements for a statement of personal history and other information to be submitted for new associates. The commenters appeared to suggest—incorrectly—that this is a new requirement. Section 120.830 currently requires CDCs to submit to SBA for review and approval the “resumes for all new Associates and staff.” SBA's longstanding procedure has been to require statements of personal history, fingerprint cards, and resumes for all such individuals, just as SBA requires for all individuals identified in the CDC's initial application for certification. (See SBA standard

operating procedures 50–10(4), subpart H, chapter 4, paragraph 5(d)(1).) As the sole regulatory oversight agency for CDCs, SBA is responsible for performing the necessary due diligence to assure that new associates and staff meet certain ethical and experience standards. Therefore, in order to make the rule reflective of SBA's longstanding practice, SBA is publishing in the final rule § 120.830 as proposed.

Section 120.835, application to expand an area of operations, is revised. Currently, most of the applications SBA receives are for expansions of a CDC's area of operations within its State of incorporation. The expansion request usually is for several counties in which there currently are one or more CDCs that include those counties in their areas of operations. Because the final rule establishes the State of incorporation as the minimum area of operations for all CDCs and because SBA is allowing the marketplace to determine the optimum number of CDCs, these types of expansion requests no longer will be necessary and much of the current regulatory language is no longer required (refer to discussion of changes to § 120.802 and § 120.810). Therefore, SBA has modified the regulation to limit SBA's consideration of applications for expansion to only those requests by a CDC to expand beyond the CDC's State of incorporation either to a local economic area contiguous to the State in which the CDC is incorporated, or to an entire State contiguous to such State.

SBA also has added the requirement that CDCs must be ALP-qualified before they can request either type of expansion. Several commenters expressed concern that this new requirement will make it more difficult for a CDC to expand beyond its area of operations. SBA reiterates that with the minimum area of operations being Statewide, there will be far less need for CDCs to request the right to expand because SBA believes that the majority of CDCs will not wish to expand beyond their own State. For a CDC that wishes to expand into local economic areas or entire States outside its State of incorporation, however, it is important that such CDC be of a sufficient size and at a sufficient level of proficiency in the 504 Program to be able to adequately cover territory beyond its State. SBA is concerned about, among other things, the CDC's portfolio size and currency, performance as a CDC, and whether the CDC has sufficient proficiency with loan closing (*i.e.*, has a designated attorney and the necessary insurance coverage to be able to participate in SBA's expedited loan closing process) and that

the CDC is knowledgeable of applicable law in other States, to be able to handle the additional territory without presenting an undue risk to SBA's overall 504 loan portfolio. For these reasons, the final rule requires a CDC requesting expansion of its territory beyond its State of incorporation to be ALP-qualified, as proposed.

To further streamline the application process for multi-state expansion, SBA is deleting the requirement that a multi-state CDC have at least three members from each State on its board. SBA believes that the general membership requirements (see § 120.822) and loan committee requirements (see § 120.823) for the State into which it is expanding are sufficient to demonstrate the CDC's commitment to local economic development in that State. (To be consistent with this deletion in § 120.835 regarding the board requirements, SBA also is modifying § 120.823(b).) A discussion of the comments received regarding the minimum area of operations and local economic areas may be found under § 120.802. SBA also received comments regarding multi-state CDC requirements that were not proposed for change, including membership and loan committee requirements, and were, therefore, beyond the scope of this rulemaking. They may be considered as part of a proposed rule at some future date. Therefore, SBA is publishing in the final rule § 120.835 as proposed.

Section 120.836, public notice, and opportunity for response, is deleted. SBA believes that the requirement is no longer needed for the same reasons discussed regarding § 120.811. The final rule deletes § 120.836 as proposed.

Section 120.837, SBA decision on application for a new CDC or for an existing CDC to expand an area of operations, streamlines the process by changing the paragraph on a multi-state CDC to permit any unilateral authority that a CDC has in its State of incorporation to be carried over into the additional State in which it is approved to operate as a multi-state CDC and clarifying SBA's decision process. Comments received generally were in support of the proposed changes. However, several commenters suggested that the proposed changes seemed to have deleted the decision process for new CDCs and CDCs expanding into local economic areas. After reviewing the proposed rule, including the summary which stated that the regulation was to continue to cover both new CDCs and expanding CDCs, SBA agreed with the commenters and has modified the rule. SBA reviewed the proposed rule and determined that