

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. SBA believes that there are no viable alternatives to these changes that would produce similar positive results without imposing an additional burden on the SBA or the public.

In Fiscal Year (FY) 2002, OMB developed the Program Assessment Rating Tool (PART) to establish a systematic, consistent process for rating the performance of programs across the Federal government. The 504 Program was evaluated under the PART criteria in FY 2002. The PART review revealed that the SBA needs to increase the availability of CDCs within the 504 Program to improve customer access to loans. Additionally, increasing the availability of CDCs will enable borrowers to determine which of the SBA's loan programs best meet their needs. The SBA expects that this rule will address that recommendation from OMB. The OMB PART review on this program can be found at <http://www.whitehouse.gov/omb/budget/fy2004/pma/certifieddevelopment.pdf>.

The SBA does not have sufficient data to establish a baseline in order to measure the costs and benefits of this rule on the affected public. However, the SBA has data on the cost to SBA of the 504 Program. In FY2002, the cost of the 504 Program to SBA was approximately \$15 million. The majority of the cost of the Program, 82 percent or \$12.6 million, was for the cost of the field office staff support that reviewed and approved loan applications and conducted marketing and outreach to generate new loans. The cost of the 504 Program to the SBA also includes the cost of reviewing and analyzing CDC requests to expand their areas of operations by SBA's field office and Headquarters staff. The SBA would expect this cost to decline substantially as a result of this final rule because it permits all CDCs to operate at least throughout their State of incorporation. Other data on costs of the program can be found at <http://www.sba.gov/aboutsba/budgetplans.html>. Relevant information is provided on pages 23–24 of SBA's Budget Request and Performance Plan: Congressional Submission Fiscal Year 2004 and on pages 69–71 of SBA's Performance and Accountability Report Fiscal Year 2002.

Regulatory Flexibility Act: This rule directly affects all CDCs, of which there are approximately 270. SBA has determined that CDCs fall under the size standard for NAICS 522298, All Other

Nondepository Credit Intermediaries. The size standard is \$6 million in average annual receipts. SBA estimates that at least 95 percent of the CDCs do not exceed this size standard and are therefore considered small entities by this definition. Thus, SBA has determined that this rule will have an impact on a substantial number of small entities.

Even though SBA has determined that this rule will have an impact on a substantial number of small entities, SBA has determined that the impact will not be significant. SBA understands the concerns raised by some comments received that suggested that this rule may have a significant impact on many small and rural CDCs. Some comments expressed the concern that increased competition and reliance on market forces could lead to more decertifications of small and rural CDCs. Other commenters stated that small CDCs will not be able to compete in the new competitive environment this rule would create. For example, one stated concern is that larger CDCs would have an unfair advantage, and that small CDCs would be hurt by the new competition because many small CDCs will not have the resources necessary to access more profitable markets beyond their current area of operations while larger CDCs will access the more profitable markets of small and rural CDCs.

SBA considered these comments but continues to believe that the rule is not significant. SBA believes that the effect of this rule will be first to "level the playing field" by allowing CDCs more flexibility to choose the optimal area of operations within their State of incorporation. Currently, each CDC has a specific area of operations that is approved by SBA. The typical area of operations is several counties within the CDC's State of incorporation. If a CDC wishes to apply to expand into neighboring counties, it can only do so if those counties are available. A county is available to a new CDC or a CDC requesting to expand its area of operations if the CDC(s) that include that county in its area of operations is not meeting a threshold of one 504 approval per year per 100,000 population averaged over two years. If the existing CDC is meeting this threshold of activity, both an applicant wishing to become a CDC and a CDC wishing to expand its area of operations is barred from including that county in their request. This rule eliminates that threshold and permits all CDCs the opportunity to operate anywhere in their State of incorporation. This would allow CDCs in less lucrative areas to

have access to the greater opportunities available in the more lucrative areas.

SBA believes that some CDCs will choose to continue to operate in those counties they presently operate in while others will choose to expand their market area into neighboring counties or throughout the State. It has been SBA's experience with CDCs that are permitted to compete with other CDCs in the same market area, that the market of eligible 504 projects itself expands, resulting in a benefit for the affected CDCs as well as a benefit to small business borrowers. A recent example was the approval of a large CDC into a small CDC's area of operations in the Midwest. As a consequence, a county in which there had been no 504 loan activity the prior year generated two 504 loans for the small CDC and three 504 loans for the large CDC.

SBA also believes that smaller, rural CDCs will derive a similar benefit by having a greater opportunity to meet the required 504 loan activity level. Since 1993, SBA has had to revoke certifications from more than 100 CDCs and transfer their 504 loan portfolios and fees to other, active CDCs due to their failure to meet the required 504 activity level of two 504 loan approvals per year averaged over two years. Most of these CDCs have been located in rural areas where there are a limited number of potential 504 projects. Competition with other, larger CDCs was not the reason why these rural CDCs could not meet the required loan volume. There was simply a lack of 504-eligible projects in the geographic area. This rule enables those small, rural CDCs the opportunity to expand their market area by doing projects in more populous areas, resulting in their more easily meeting the 504 loan activity level. The result will be that these CDCs will remain in the program and continue to be available locally to small businesses in the rural areas. At the same time, those CDCs that currently have exclusive areas that include populous urban areas resulting in substantial 504 loan activity may seek to expand their market areas into the less lucrative rural areas which will increase awareness of the program overall which may in turn be beneficial to the small, rural CDCs.

Finally, as stated previously, it has been SBA's experience that the more CDCs that market the 504 program in a particular area, the higher the 504 loan volume in that area. SBA believes that this is due to the additional marketing initiatives by the CDCs which creates an increased awareness of the 504 Program among the local lending community and improves their willingness to participate because they have a choice. SBA