Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 120 and 121

RIN 3245–AG04

504 and 7(a) Loan Programs Updates

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (''SBA'') has determined that changing conditions in the American economy and persistent high levels of unemployment compel the agency to seek ways to improve access to its two flagship business lending programs: the 504 Loan Program and the 7(a) Loan Program. The purpose of this proposed rulemaking is to reinvigorate these programs as vital tools for creating and preserving American jobs. SBA proposes to strip away regulatory restrictions that detract from the 504 Loan Program's core job creation mission as well as the 7(a) Loan Program's positive job creation impact on the American economy. The 504 Loan Program and 7(a) Loan Program are SBA's two primary business loan programs authorized under the Small Business Investment Act of 1958 and the Small Business Act, respectively. This proposed rule will enhance job creation through increasing eligibility for loans under SBA's business loan programs, including its Microloan Program, and by modifying certain program participant requirements applicable to the 504 Loan Program. In addition, SBA proposes to revise Certified Development Company (CDC) operational requirements to clarify certain existing regulations.

DATES: SBA must receive comments to this proposed rule on or before April 26, 2013.

ADDRESSES: You may submit comments, identified by RIN: 3245–AG04 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: ocareg2013@sba.gov.* Include RIN 3245–AG04 in the subject line of the message.
- *Mail:* Patrick Kelley, Deputy Associate Administrator, Attention: Linda Reilly, Chief, 504 Program Branch, Office of Capital Access, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.
- *Hand Delivery/Courier:* Patrick Kelley, Deputy Associate Administrator, Attention: Linda Reilly, Chief, 504 Program Branch, Office of Capital Access, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

SBA will post all comments on *www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Patrick Kelley, Deputy Associate Administrator, Attention: Linda Reilly, Chief, 504 Program Branch, Office of Capital Access, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, or send an email to *ocareg2013@sba.gov.* Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Washington, DC 20416; telephone 202–205–9949.

SUPPLEMENTARY INFORMATION:

I. Background Information

Executive Order 13563 directs agencies to ensure that regulations are accessible, consistent, written in plain language, and easy to understand in order to foster economic growth and job creation. Executive Order 13563 provides that our regulatory system ''*must* identify and use the best, most innovative, and least burdensome tools for achieving regulatory ends.'' (emphasis added). Executive Order 13563 further provides that ''[t]o facilitate the periodic review of existing significant regulations, agencies shall consider how best to promote *retrospective analysis* of rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and to *modify, streamline,* expand, or repeal them in accordance with what has been learned.'' (emphasis added). SBA has reviewed its regulations with regard to the loan programs and is proposing a number of amendments and revisions to accomplish this goal.

SBA's primary business loan programs are the 504 Loan Program (the ''504 Loan Program''), authorized pursuant to Title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 *et seq.,* and the 7(a) Loan Program (the ''7(a) Loan Program'') authorized pursuant to Section 7(a) of the Small Business Act, 15 U.S.C. 631 *et seq.* (collectively referred to as the ''504 and 7(a) Loan Programs''). A description of each loan program is set forth below.

A. SBA's 504 Loan Program

The 504 Loan Program is an SBA financing program established to target companies in their growth cycle to create jobs, expand the tax base, and improve American communities. Specifically, the core mission of the 504 Loan Program is to provide long-term fixed asset financing to small businesses for the purchase or improvement of land, buildings, and major equipment purchases, in an effort to facilitate the creation of jobs and local economic development.

Under the 504 Loan Program, loans are made to small business applicants by Certified Development Companies (''CDCs''), which are SBA's community-based partners for providing 504 Loans. With the exception of several for-profit CDCs grandfathered into the 504 Loan Program, a CDC is a nonprofit corporation that promotes economic development within its community through 504 Loans. CDCs are certified and regulated by the SBA, and work with SBA and participating lenders (typically banks) to provide financing to small businesses, which in turn, accomplishes the goal of community economic development. There are over 260 CDCs nationwide each with a defined Area of Operations covering a specific geographic area. The Area of Operation for most CDCs is the state in which they are incorporated.

Transactions under the 504 Loan Program are typically structured with a CDC providing 40% of the total project costs (with SBA's guarantee assistance), a participating lender covering up to 50% of the total project costs, and the borrower contributing 10% of the project costs. Under certain circumstances, a borrower may be required to contribute up to 20% of the total project costs.

In sum, the 504 Loan Program is an economic development tool and its success is measured, in large part, by the number of jobs it preserves and creates. In FY 2012, the agency made 7,047 loans through the 504 Loan Program, for a total volume of $4.4 billion, which led to the creation and/or retention of almost 80,000 jobs. SBA estimates that the proposed regulation revisions, set forth in detail below, will result in approximately 140,000 additional jobs created/retained over a five-year period. These additional jobs created/retained are based on an estimated 47,000 loans being made between FY 2013 and FY 2017, with an estimated total dollar volume of almost $30 billion and the creation/retention of over 500,000 jobs over the five-year period. The changes proposed primarily with regard to the Personal Resources Test and affiliation will increase the number of eligible borrowers.

B. SBA's 7(a) Loan Program

The 7(a) Loan Program's main purpose is to help eligible small businesses obtain credit when they cannot obtain ''credit elsewhere.'' In addition, the agency recognizes that the 7(a) Loan Program is also an important engine for job creation. The 7(a) Loan Program provides financing for general business purposes through the agency's guaranty of a loan made by an approved lender. Currently, there are approximately 4,500 lenders participating in the 7(a) Loan Program.

Below is a summary of the proposed changes to these business loan programs. The agency requests comments on all of the proposed regulatory revisions in this proposed rule, and on any related issues affecting the 7(a) Loan Program or the 504 Loan Program. SBA's intent is to revitalize the use of both loan programs as an engine of job retention and growth in an effort to use ''the best, most innovative, and least burdensome tools for achieving regulatory ends * * * and seek to improve, the actual results of regulatory requirements'' in accordance with Executive Order 13563.

II. Summary of Proposed Business Loan Program Changes

Though SBA's business loan programs differ in mission and focus, these loan programs share fundamental eligibility criteria and overlapping objectives. The goal of the proposed rule is to reinvigorate the business loan programs by eliminating unnecessary compliance burdens and loan eligibility restrictions in an effort to make necessary adjustments to increase lender accessibility without sacrificing program integrity. The major changes that SBA is proposing are described below, including changes relating to affiliation principles, the personal resources test, the 9-month rule for the 504 Loan Program, and CDC operational and organizational requirements. Additional changes are described in the section-by-section analysis.

A. Affiliation as Applied to the Business Loan Programs

Under SBA's regulations, applicants for an SBA loan must be small under SBA's size requirements (including affiliates) to be eligible for an SBA business loan. 13 CFR 120.100. When an entity is determined to be affiliated with an applicant, the entity's receipts and employees are added to those of the applicant for purposes of determining its size. Thus, certain businesses are deemed to be ineligible for assistance because they are not deemed to be ''small'' for program purposes by virtue of their combined size with affiliated entities.

SBA's regulations, at § 121.103, set forth the agency's principles of affiliation. Generally, affiliation exists when one business controls or has the power to control another or when a third party (or parties) controls or has the power to control both businesses. Control may arise through ownership, management, or other relationships or interactions between the parties. Affiliation is an important issue when determining size because SBA counts the receipts, employees, or other measure of the business, for all of a small business' domestic and foreign affiliates, regardless of whether the affiliates are organized for profit (13 CFR 121.103(a)(6)). SBA's affiliation rules generally apply to all Federal programs for which a business must qualify as ''small,'' including SBA's Government Contracting or Business Development programs, business loan programs and grant programs. Therefore, applicants for financing under the 504 Loan Program, 7(a) Loan Program or Microloan Program must qualify as ''small businesses'' taking into consideration the employees, receipts, and other measures of business of the applicant and all of the applicant's affiliates.

SBA believes that, in general, most of the principles of affiliation set forth in § 121.103 appropriately apply to the agency's business loan programs. However, SBA believes that certain affiliation principles—such as those concerning newly organized concerns—are not applicable to the 504 and 7(a) Loan Programs or the Microloan Program because assisting in the creation of new small businesses serves the purpose of the business loan programs. In addition, SBA is seeking to create a simple, bright-line test for business loan program applicants when determining eligibility with respect to size and affiliation. By eliminating or modifying certain affiliation principles, this proposed rule would also significantly reduce the burden on applicants of providing affiliation documentation. As described below, SBA is proposing to add a new § 121.302 to identify the principles of affiliation that should apply to the business loan programs in place of the affiliation principles set forth in § 121.103, and invites comments on these proposed changes.

With respect to determining affiliation based on ownership, the following principles *currently* apply to the business loan programs: (1) If the business concern's stock is widely held and no single block of stock is large as compared to others, the board of directors and Chief Executive Officer or President is deemed to have the power to control the business, absent evidence showing otherwise; (2) if two or more persons (including any individual, concern or other entity) each owns, controls or has the power to control less than 50% of the concern's voting stock, and the blocks of stock are equal or approximately equal in size and the blocks of stock are large in the aggregate as compared with any other stock holding, SBA presumes that each person controls or has the power to control the business concern whose size is at issue; or (3) if a person (including any individual, concern or other entity) owns, or has the power to control, 50 percent or more of a concern's voting stock, or a block of voting stock which is large compared to other outstanding blocks of voting stock, such person controls or has the power to control the business concern. It is also important to note that SBA's current affiliation rules (§ 121.103(a)(3)) may find affiliation based on ''affirmative control'' (e.g., owning more than 50% of the voting stock of a company) as well as ''negative control'' (e.g., owning less than 50% but still having the ability to block votes).

SBA is proposing to amend the principles described above for affiliation based on ownership in a manner similar to changes recently proposed by SBA for the Small Business Innovation Research and Small Business Technology Transfer programs (77 FR 28520, May 15, 2012). Under these proposed changes, SBA would deem the Chief Executive Officer (CEO) or President of the concern (or other officers, managing members, partners, or directors who control the management of the concern) to control the concern when no one person owns or has the power to control more than 50% of the voting equity of the concern. SBA believes that for purposes of the agency's business loan programs, control in this situation would rest with the managing parties identified above since it is those parties that are truly running the concern. If one person does own or has the power to control more than 50% of the voting equity of the concern, that person is in control of the concern for purposes of determining affiliation. In addition, if two or more persons collectively own or have the power to control more than 50% of the voting equity of two or more concerns (the ''collective owners''), then there would be affiliation between such concerns and between each concern and each collective owner. In addition, in this proposed rule, SBA refers to 50% ownership or equity without designating that it is ''stock'' ownership because not all business loan applicants are corporations with ownership determined through stock issuance. SBA is also proposing to not consider ''negative control,'' by itself, as a factor in determining affiliation.

SBA requests comments on this proposed rule as it relates to business loan applicants where no person owns a majority of the applicant, and whether SBA should: (1) Retain the current affiliation rule with respect to minority holdings and, if so, whether it should set forth a specific threshold by which it will find control and therefore affiliation (e.g., if a person owns 33% or more of the company) in order to create a bright-line test for applicants; (2) find affiliation, as proposed, if two or more persons or concerns collectively own more than 50% of the applicant, and the same persons or concerns collectively own more than 50% of any other company or entity; or (3) implement a rule setting forth both options (1) and (2) above.

In addition to incorporating the above principles of affiliation based on ownership, SBA is proposing to incorporate in § 121.302(c) and (e), respectively, the existing affiliation principles currently contained in § 121.103(c) (Affiliation arising under stock options, convertible securities, and agreements to merge) and § 121.103(i) (Affiliation based on franchise and license agreements). SBA is also proposing to incorporate in § 121.302(d), with slight modifications, the existing affiliation principles currently contained in § 121.103(e) (Affiliation based on common management).

In addition to the above proposed change, SBA proposes changing current affiliation principles relating to the following three areas: identity of interest; newly organized concerns; and joint ventures. First, with respect to affiliation based on identity of interest, SBA proposes to not apply the current affiliation principle relating to identity of interest set forth in § 121.103(f) to the 504 Loan Program, the 7(a) Loan Program or the Microloan Program. Affiliation through identity of interest often is found between business partners, family members, and employers. SBA is aware that an applicant may have relationships with former employers, business partners, friends, or family members which can be important to the business success of the applicant. These relationships often strengthen the creditworthiness of the applicant by providing the applicant with more resources from which to draw, thus lowering taxpayer risk while increasing the job creation and small business growth missions of the business loan programs. It is the agency's view that these relationships are common and, in the context of the business loan programs, should not prevent an applicant from independently operating and growing a business and creating jobs. Moreover, small businesses would have less of a financial incentive to use family members or former employees as business ''fronts'' to obtain a business loan than to obtain a grant or bid on a contract under a government set-aside program. Businesses would appear to have little incentive to incur debt through the use of such tactics because, unlike a grant or contract, the debt must eventually be repaid. Weighing all of these factors, the agency proposes to end application of the identity of interest affiliation rule to the business loan programs; however, it strongly encourages comment on this proposal especially as it relates to potential threats to business loan program integrity.

Second, with respect to affiliation based on a newly organized concern, SBA proposes to not apply the current affiliation principle relating to newly organized concerns set forth in § 121.103(g) to the 504 Loan Program, the 7(a) Loan Program or the Microloan Program. The agency proposes this change for substantially the same reasons it is proposing the change related to identity of ownership discussed above. If employees of a former employer form a new business and the former employer does not have ownership control of the new business, SBA believes that for purposes of the business loan programs the former employees will generally have sufficient independence and control of the newly formed business to not be affiliated with the former employer. The newly organized concern principle is needed in the agency's grant and contracting programs to prevent large companies from misrepresenting themselves as small through a shell company in order to obtain a grant or lucrative government contract intended as a small business set aside. However, the principle is not necessary in the business loan programs because larger companies have greater access to private sector capital sources than small businesses and would have little need to form a new concern to obtain a government loan. Thus, the agency is proposing to exempt agency business loan program applicants from application of the affiliation based on newly organized concern rule.

Finally, with respect to affiliation based on joint ventures, SBA proposes to not apply the current affiliation principle relating to affiliation based on joint ventures set forth in § 121.103(h) to the 504 Loan Program, the 7(a) Loan Program or the Microloan Program. Agency records indicate that applicants for assistance under agency business loan programs are rarely, if ever, joint ventures and, therefore, this provision is unnecessary for the business loan programs. This proposed change is being made in the interest of streamlining and simplifying business loan program rules, and to provide bright line eligibility criteria regarding affiliation determinations for the business loan programs.

In conjunction with proposing the above revisions to 504 Loan Program regulations to expand program accessibility, streamline complicated processes, and minimize burdens to applicants and lenders, SBA seeks to ensure program integrity and maintain proper oversight through the following means. First, to assist in ensuring compliance with the affiliation principles, SBA proposes to require applicants to sign an affidavit certifying that all persons affiliated with the applicant have been identified in the affidavit. It is the agency's view that applicants are expected to know and disclose these persons and requiring this disclosure under sworn statement to the Federal government should deter applicants from omitting important information necessary for determining compliance with the applicable size requirements. An affidavit on affiliate certifications would enable participant lenders to improve consistency and would also expedite SBA's review of the size eligibility of potential applicants. Completing the affidavit to document affiliated business owners of 50% or less would be less burdensome on applicants than having to submit tax documents or financial statements. In fact, SBA estimates that the proposed revision would reduce the burden on participants in both loan programs (both borrowers and lenders) by a total of 26,402 hours and result in savings totaling $700,777. Based on estimates using FY 2012 loan approvals as a base, the annual savings to borrowers for both programs combined is estimated at $700,000 and $750,000 annually. Similarly, SBA estimates that the proposed revision will reduce burden to the government by a total of 2,666 hours and result in savings totaling $78,085. Based on estimates using FY 2012 approvals as a base, this burden reduction in loan review time combined for both loan programs, is estimated at between $80,000 and $100,000 annually. Thus, not only would the affidavit on affiliates be a control mechanism to ensure against abuse of SBA's guaranty and simplify and reduce potential mistakes in size standard decisions, but it would also be a critical time and cost saving measure, as demonstrated by the above data.

Second, and notwithstanding the agency's goal to provide bright line eligibility criteria regarding affiliation determinations for the business loan programs, the agency realizes that egregious cases of large entities benefiting from a small business loan program can threaten program integrity and public support. Thus, the agency proposes to add a provision applicable only to the business loan programs which would give the agency the discretion to prevent business loan program participation of an applicant if, after consideration of the totality of the circumstances, it determines that affiliation exists rendering the applicant ineligible, even when no single factor is sufficient to constitute affiliation. For example, a finding of affiliation may be appropriate if an applicant lists a minor child as a majority owner and CEO of a concern, but a parent of the child actually owns or has the power to control the business. The Agency would look beyond the fiction of the child's ownership and position to determine who actually controls the business, and consider the affiliates of the party in control.

The agency does not expect to use this discretionary provision often and intends to apply it only in egregious cases, one being the example identified above, that might threaten business loan program integrity or viability. SBA encourages comments and suggestions regarding this proposal and, specifically, regarding additional standards to prevent loans to ineligible applicants, which could endanger the viability of the loan programs.

In sum, the elimination of unnecessary affiliation tests from the business loan programs would expand program eligibility to independently owned and controlled small businesses that would have previously been considered ineligible. This is illustrated by the fact that the SBA 504 loan program has not exhausted its program authority in the last 6 years. From 2006 through 2011, approximately 32% of authorized funds have gone unused. In 2012, SBA had left unused 41% of its 504 loan program authorized funds. Therefore, SBA recognizes the need to expand access to the program to more small businesses.

Moreover, as a result, this proposed change would also significantly reduce the excessive burden that is imposed on all eligible small businesses and participating lenders to provide documentation for numerous affiliates to make size evaluations. Under the current regulations for both loan programs, SBA estimates that borrowers and lenders expend $7,274,657 and spend 274,448 hours on providing the documentation for numerous affiliates for SBA to make size determinations. Under the proposed revisions, the SBA estimates that lenders and borrowers would expend $6,573,880 and spend 248,046 hours on providing the necessary documents to SBA. Along those same lines, under current regulations, SBA estimates that the Agency expends approximately $1,567,246 and 53,549 hours on reviewing all of the documents in making size eligibility determinations. Under the proposed revisions, the SBA estimates expending $1,489,161 and 50,883 hours on reviewing the necessary documents.

By mitigating the burdens imposed by the current regulations and streamlining processes, the proposed rule would expand eligibility for the 504 and 7(a) Loan Programs, as well as SBA's Microloan Program authorized under section 7(m) of the Small Business Act (the ''Microloan Program''), by redefining the permitted affiliations for borrowers for purposes of determining the applicant's size, but balancing that expansion by requiring an affidavit as to ownership and including a discretionary provision allowing the SBA to analyze the ''totality of the circumstances'' in egregious cases.

B. The Personal Resources Test

An applicant is ineligible for financing under the agency's business loan programs if it can obtain credit elsewhere. A brief history surrounding the current regulation is instructive here. The initial version of Section 7(a) of the Small Business Act authorized SBA to make loans to small businesses with the restriction that ''no financial assistance shall be extended * * * unless the financial assistance applied for is not otherwise available on reasonable terms.'' (Pub. L. 85–536, 72 Stat 388 (1958)). During the initial implementation of the 7(a) Loan Program in 1958, the agency interpreted the financial resources test to include the requirement that the funds applied for by the applicant ''not appear to be obtainable without undue hardship through utilization of the personal credit or resources of the owner, partners, management, or principal shareholders of the applicant.'' (23 FR 10513, December 31, 1958). Thus, the agency required documentation that obtaining the needed financing through use of personal credit or personal resources would create undue hardship before the applicant would be eligible for agency assisted financing.

As early as 1971, the agency received feedback from the U.S. General Accounting Office that loans or guarantees were being made on behalf of applicants in greater amounts than were necessary considering the personal credit and personal resources of those applicants. The recommendation at that time was that the agency create criteria that would specify to agency loan specialists when a loan should be disapproved or agency participation reduced because the personal resources or credit of principals were substantial enough to be used without undue hardship of the principals.

In response, SBA began to provide strict criteria including procedures for ''careful review'' of any person with 20% ownership in the company or engaged in active management of the company (and in tandem excusing from review persons with less than 5% ownership interest in the applicant with no active management role with the applicant). Still, there was no bright-line established for what would presumptively constitute an ''undue hardship'' or what contribution of personal resources was appropriate. For example, in the agency's standard operating procedures effective in 1985, guidance to loan specialists for the 7(a) Loan Program stated that ''reasonable utilization of personal assets'' of applicant principals applied to each principal's family as well, with exemptions for cash surrender of life insurance and IRAs, reasonable education expenses, and an additional exemption for each family equal to $50,000 or 25% of the loan amount, whichever was greater. (SBA SOP 50 10 2A (page 38, effective September 16, 1985) (available upon request.)) There was also guidance regarding the requirement that certain family real estate could be counted as personal resources to be used in lieu of program assistance (e.g., ''refinancing or sale of real estate may be considered when a principal owner has funds readily available through sale or refinancing that would provide a *majority* of the loan request'' though owner occupied residences were generally exempted and there was an exemption when ''these general rules appear to work as a hardship due to the circumstances of the individual case.'') (SBA SOP 50 10 2A (page 39, effective September 16, 1985) (available upon request.)) This history demonstrates the difficulty the agency had in establishing clear standards for determining when the use of personal resources would create undue hardship to the principals of a business. In 1996, the agency revised its regulations in an effort to create a more objective standard by quantifying the amount of personal resources that must be injected into the business. (61 FR 3226, January 31, 1996)

While there have been numerous amendments to Section 7(a), the credit elsewhere restriction has remained, with slight modifications. For instance, the phrase ''credit elsewhere'' was introduced in 1981 when the provision was changed to read that ''[n]o financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere.'' (The Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981, Pub. L. 97–35, title XIX, section 1902, 95 Stat. 767 (1981)). A definition for ''credit elsewhere'' was added at the same time. Section 3(h) of the Small Business Act defines ''credit elsewhere'' as the ''availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.'' 15 U.S.C. 632(h).

Similarly, for the 504 Loan Program, section 503(b)(2) of the Small Business Investment Act of 1958 authorizes financing of applicants only when ''necessary funds for making such loans are not available to such companies from private sources on reasonable terms.'' Historically, to meet this requirement, the agency verified that private financing on reasonable terms was not available to the 504 applicant, but did not require a review of the personal resources of the applicant's principals and owners. As late as 1993, the agency issued standard operating procedures that instructed loan specialists that the availability of personal resources would not usually disqualify an applicant from receiving assistance under the 504 Loan Program because the primary focus of that program was economic development (job creation). (SBA SOP 50 22 3A (page 58, effective December 30, 1993) (available upon request)). In 1995, however, SBA published proposed regulations explaining that the agency had come to the conclusion that ''there is no difference between the business loan programs regarding evidence of need [and that] SBA will consider the personal wealth and resources of the principals and owners in determining an applicant's need for SBA financial assistance in all business loan programs, and SBA may require the principals and owners of the applicant to use their personal resources before SBA will grant financial assistance'' (60 FR 64362, December 15, 1995). This change was adopted as final in 1996, and the 504 Loan Program was made subject to the same personal resources test as the 7(a) Loan Program. (61 FR 3226, January 31, 1996).

Under the current personal resources test for the 7(a) and 504 Loan Programs, an assessment is required of the liquid assets of each owner of 20 percent or more of the equity of the applicant company to determine the overall dollar value of personal resources that do not have to be injected into the business (referred to as the ''exemption''). The current allowable exemption is determined on the basis of the ''total financing package.'' The total financing package includes any SBA loans, together with any other loans, equity injection, or business funds used or arranged for at the same general time for the same project as the SBA loan. If the total financing package:

- Is $250,000 or less, the exemption is two times the total financing package or $100,000, whichever is greater;
- Is between $250,001 and $500,000, the exemption is one and one-half times the total financing package or $500,000, whichever is greater; or
- Exceeds $500,000, the exemption equals the total financing package or $750,000, whichever is greater.

Once the exemption is determined, it is subtracted from the liquid assets. If the result is positive, that amount must be injected into the project.

The agency is proposing to eliminate this personal resources test from the regulations. SBA has become concerned, that even borrowers whose principals have significant personal resources may be unable to obtain long-term fixed asset financing from private sources at reasonable rates. The agency is now questioning whether the existence of personal resources directly correlates to the ability to obtain commercial credit on reasonable terms and is, therefore, rethinking the appropriateness of using personal resources as an indirect means of determining whether credit is available from private sources. The agency believes it is part of the agency's core mission regarding the assistance of small businesses to increase access to capital and that a personal resource test does not promote access to capital as it unnecessarily restricts the pool of potential investors for small businesses that participate in both loan programs. The agency notes that if the personal resources test is eliminated, more robust borrowers will be eligible to participate in the 504 and 7(a) Loan Programs, The agency is proposing to eliminate this personal resources test from the regulations thereby mitigating risk to the agency's portfolio of loans while facilitating job growth. Based on the agency's records, the number of loan approvals dropped by 42% in 1997, the year after the personal resource test was first instituted for the 504 Loan Program. As the recession has limited access to capital, eliminating the personal resource test would assist small businesses in attracting more types of investors.

For reasons set forth above, the agency believes that the core business loan program missions, including the core job creation mission of the 504 Loan Program (15 U.S.C. 695) and the small business credit support mission of the 7(a) Loan Program (15 U.S.C. 636), would best be served by focusing on the statutory requirement regarding the availability of credit on reasonable terms without attempting to document and enforce precise determinations regarding the appropriateness of personal resource contributions. The agency is therefore proposing to eliminate the personal resources test from the regulations for both loan programs.

The agency continues to believe, however, that the personal resources of the applicant should be taken into consideration in determining what equity injection, if any, should be required of the applicant's principals and owners. Prudent lending includes a determination that the business is adequately capitalized and, if not, that available personal resources be injected into the business. In addition, it is important to note that agency regulations require that persons with a 20% or more ownership interest in an applicant guarantee a business loan program financing (and other persons may also be required to provide personal guarantees). This means that if such guarantors have substantial personal resources, those resources will conditionally support the financing.

SBA invites comments on this specific issue and on the general issue of whether a personal resources test should be retained and, if so, in what form.

C. The ''9-Month Rule'' (applies to 504 Loan Program Only)

Under current 504 Loan Program regulations, § 120.882(a) permits financing of expenses toward a project only if they were incurred ''within nine months prior to receipt by SBA of a complete loan application, unless the time limit is extended or waived by SBA for good cause.'' SBA proposes to eliminate this nine month limitation and permit financings of expenses toward a project regardless of when they were incurred. Some general context related to this proposed revision follows.

Refinancing of debt unrelated to the 504 project is currently allowed in the 504 Loan Program only pursuant to statutorily limited circumstances as set forth in § 120.882(e) and (g). There are, however, circumstances when an applicant might incur short term debt to cover expenses directly attributable to a larger project that is eligible for financing under the 504 Loan Program. This is particularly true when building construction is part of the project. Acquisition of a building, and particularly the decision to construct from the ground-up, is the result of planning over months, if not years. Diligent small business owners approach the process in a series of steps based upon what is affordable and how the business is performing. Financing for these initial expenditures also is determined by what is cost-effective for the business. In such cases, the agency has under certain conditions allowed those expenses/debts to be included as part of a 504 Loan Program project. What follows is a short summary of the relevant history of how those conditions evolved under the program to its current criteria.

On July 5, 1985 (50 FR 27754), SBA proposed § 108.503–5(d), which allowed financing of expenditures made in anticipation of a financing under the 504 Loan Program if, among other conditions, the applicant filed a written notice to SBA within 60 days after the expenditure.

On June 6, 1986 (51 FR 20764), SBA finalized the above rule and, in response to comments, added that previously acquired land should be eligible to be included in project costs without regard to the timing of the acquisition. It was added as § 108.503–5(d)(2) and the rule above became (d)(1).

On January 31, 1996 (61 FR 3226), SBA published final regulations which essentially re-wrote the loan program regulations and in the process added what is now referred to as the ''9-month rule'' providing the following explanation in the preamble:

''§ 120.882. In the current regulations, costs incurred by a Borrower in anticipation of receiving a 504 loan are not eligible to be included in Project costs unless the applicant has filed a written notice with the CDC and SBA within 60 days of incurring the expense and SBA gives written approval. As a result, CDCs and SBA receive notices from many potential borrowers considering 504 financing who desire to maximize potential financing. Many of these businesses never actually apply or their applications are denied. In those cases, the written notices are a useless paperwork burden on SBA, the CDC and the applicant. Therefore, SBA proposed in § 120.882(a)(2) to eliminate the requirement for written notice and allow as an eligible Project cost any expense incurred toward a Project within six months of receipt by SBA of a complete loan application.

SBA received 16 comments opposing the 6 month limit. Commenters pointed out that in actual practice the time it takes to reach the point of application is often far greater than 6 months. In many metropolitan areas, the zoning use permits, building permits, and other clearances can take 9 to 12 months. Often engineering plans and architectural drawings may need to be completed or redone, and lengthy environmental studies may be required. In states like Minnesota with long winters, the delay between site preparations and construction may span more than 6 months.

The intent of the proposed rule was to alleviate unnecessary paperwork. It was not intended to limit eligible costs. Therefore, SBA increases the limit in this final rule to 9 months and adopts a comment suggesting a waiver of the limit by the SBA District Office for good cause, which waiver should not be unreasonably withheld.'' (61 FR 3226 at 3233, (January 31, 1996)).

In practice, exceptions to the 9-month rule have been granted regularly because, generally speaking, the date the expense was incurred is a poor indicator as to whether the expense was directly attributable to the applicant's 504 project. For example, because of the weak economy, many businesses' expansion plans have been delayed or placed on hold. Now, in the post-recession recovery period, many small business owners are preparing to resume their plans only to discover that expenditures already made, or the method of financing those expenditures, results in those costs not being eligible for 504 financing. As a result, SBA receives about 6–8 rule exceptions requests on a weekly basis, for an approximate total of 312–416 such requests yearly. Out of those requests, SBA declines only 1–2 per week, for an approximate total of 52–100 denials yearly. Based on these estimates, in the last five years, SBA has declined about 19% of rule exception requests, while approving approximately 81% of such requests. This data confirms the agency's belief that determining whether an expense has been incurred by an applicant for a 504 project requires a fact specific analysis which appropriate agency personnel need to make regardless of when the expense was incurred. As it relates to loan processing, the agency will continue to review any expense that was incurred prior to the date of application to ensure that it is ''directly attributable'' to the project. Based on SBA's experience in the application of the 9-month rule and having, for the most part, approved requests from applicants that SBA make an exception to this policy, the agency believes that the 9-month restriction can and should be eliminated from the regulations.

D. CDC Operational and Organizational Requirements

SBA also proposes to revise regulations dealing with corporate governance including eliminating the requirement for CDC membership and emphasizing the responsibility of the board of directors. A detailed discussion of these proposed changes can be found in the section-by-section analysis below.

E. Other Changes

The proposed rule would make other technical corrections and changes resulting in simplification of some regulations for both the 504 Loan Program and the 7(a) Loan Program, and a discussion of these proposed changes can be found in the section-by-section analysis.

II. Section-by-Section Analysis

Section 120.102 Funds not available from alternative sources, including personal resources of principals. SBA proposes to remove this regulation regarding the availability of personal assets of the principals of the Borrower. For the reasons described above under Background Information, SBA has determined that in order to better serve the small business community and economic development, the regulation should be removed for both the 504 Loan Program and the 7(a) Loan Program.

Section 120.816 CDC nonprofit status and good standing. SBA proposes to redesignate the current § 120.820 as a new § 120.816. The content would remain unchanged.

Section 120.818 Applicability to existing For-Profit CDCs. SBA proposes to add this new section to clarify that, unless expressly provided otherwise in the regulations, any Loan Program Requirement that applies to non-profit CDCs also applies to for-profit CDCs. This proposed change reflects current SBA practice.

Section 120.820 CDC Affiliation. SBA proposes to substitute the current § 120.820 with a new § 120.820 that sets forth requirements regarding CDC affiliations. In paragraph (a), SBA proposes to require that a CDC be independent and not be affiliated with any Person (as defined in § 120.10) except as permitted under this section. In paragraph (b), SBA proposes to permit CDCs to be affiliated with non-profit economic development entities or State and local government political subdivisions (e.g., councils of government). In paragraph (c), SBA proposes to permit a CDC to continue to be affiliated with a 7(a) Lender if: (1) the affiliation was in effect as of the effective date of this regulation; and (2) the 7(a) Lender is either a state development company approved by SBA as of November 6, 2003, or a credit union. This proposed change will permit the continuation of existing relationships between CDCs and 7(a) Lenders that are credit unions or state development companies, but does not permit the creation of such relationships going forward. In paragraph (d), consistent with current policy, SBA proposes adding a provision prohibiting one CDC from affiliating with or investing in or financing, directly or indirectly, another CDC.

Section 120.822 Membership. Currently, this section requires CDCs to have at least 25 members or stockholders, and also sets forth membership group requirements. SBA proposes to eliminate the requirement that a CDC have membership. Now that CDCs currently have authority to loan in a statewide (or multistate) area, the local membership board does not have the same impact as when CDCs represented a smaller service area. Maintaining both membership and a Board of Directors places an unnecessary burden on CDCs. Lessening this burden may encourage more entities to become CDCs, resulting in an expansion of the program and loans to small businesses. A CDC may continue to have membership but it is no longer an SBA requirement. Instead, SBA is emphasizing the responsibilities and duties of the CDC Board of Directors in the following section. Accordingly, SBA is proposing to remove § 120.822 from the regulations.

Section 120.823 CDC Board of Directors. In paragraph (a), SBA proposes to revise the regulations to emphasize the authority and the responsibilities of the CDC Board of Directors. The proposed regulation provides that the initial board may be created as permitted by state law. It also outlines proposed requirements for the directors' backgrounds and areas of expertise. SBA proposes adding a requirement that the Board size shall be not less than 11 voting directors and not more than 25. SBA recommends that CDCs have an odd number of Directors to avoid tie votes, which is consistent with best practices of Boards generally. SBA has based this revision upon an extensive review of the average size of non-profit boards, not limited to CDCs, which typically ranges from 7–15 Board members. Based upon the mission and responsibilities of CDCs and the average size for both for-profit and non-profit CDCs in the 504 Loan Program, however, SBA is proposing a range of 11–25 Board members. While SBA supports limiting the number of directors on the Board for efficiency of operations, the agency also understands that an important function of the Board is to provide representation for the communities served by the CDC. Having an upper limit of 25 directors for the CDC Board would provide CDCs with the opportunity to convert existing membership (currently set at a minimum of 25) to directors if they choose to do so. To increase community representation, the CDC would still have the option to have a membership to which the CDC may admit as many members as it deems appropriate.

The Agency lists several proposed areas of expertise that it believes are essential to the successful operation of the CDC Board. SBA proposes to require that a CDC have, at a minimum, one director that is a representative from the economic, community or workforce development field and two directors that are representatives from the commercial lending field. This proposed change is intended to expand the pool of potential directors and to encourage more diversity and expertise on the Board. Retired individuals may represent the fields from which they retired, as the Agency recognizes the value of their knowledge and experience.

Paragraph (b) regarding commercial lending experience is language from the existing regulation except that SBA proposes to increase the minimum number of voting directors on the Board with commercial lending experience from one to two. Further, at least two directors with commercial lending experience must be present and vote when the Board is acting on SBA approvals or servicing actions. SBA believes that this requirement is prudent now that the maximum loan amount has been increased to $5,000,000 and, in some cases, $5,500,000.

Paragraph (c) outlines the proposed minimum requirements for Board meetings and explicitly establishes the Board's responsibilities for the actions of the CDC, its staff, and any committees established by the Board of Directors. The requirement in subparagraph (c)(1) does not reflect any changes to the current regulations. To ensure effective operation and oversight of the CDC by the Board, and to encourage maximum involvement by each Director, the Agency proposes requiring that a quorum of not less than 50% of the Board be present to conduct all business. Non-voting directors will not be included for the purposes of establishing a quorum. SBA is aware that some CDCs were requiring that a quorum be present only to begin a meeting; this practice would not comply with the proposed rule. In subparagraph (c)(3), SBA proposes that meetings may be held in any manner permitted by state law, recognizing that there are methods for meeting other than being physically present. Paragraph (c)(4) proposes to maximize diversity on the Board by limiting representation by commercial lenders to less than 50% of the Board of Directors. Paragraph (c)(5) proposes to limit the ability of an outside entity (including affiliates of that entity) to control the Board by restricting the entity's representation on the CDC Board to one member.

In paragraph (d), SBA proposes to require that the Board be responsible for ensuring that the structure and operation of the CDC, as set forth in the Bylaws, comply with SBA's Loan Program Requirements. In subparagraphs (d)(1) and (2), SBA proposes to require that the Board be responsible for setting the mission and hiring, firing, supervising and evaluating the CDC manager. To emphasize the fiscal responsibility of the Board as it relates to salaries, subparagraph (d)(3) explicitly outlines the duties of the Board to set salaries for the CDC manager and to review all other salaries to provide greater transparency and accountability. SBA requires that a Report on Compensation be included in the Annual Report (see proposed § 120.830). SBA also proposes in subparagraph (d)(4) to provide the CDC with flexibility in determining whether to have committees, but addresses the requirements for Executive and Loan Committees, if established. Emphasis has been placed on the Board of Directors in this proposed rule. If a Board chooses to have an Executive Committee, then its members must be chosen from the Board as the Agency does not want this authority to be delegated to individuals who are not members of the Board. The Executive Committee must be chosen by and from the Board and meet the same requirements as the Board with the exception that the Executive Committee would be required to have no fewer than 5 voting members, and there must be a quorum of at least 5 voting members to conduct business. The proposed regulations also permit the Board to establish a Loan Committee and outline the requirements as to committee membership selection and background. As is provided in the current rule regarding the Loan Committee, no CDC staff may serve on the Loan Committee. Further, the regulation as proposed defines a quorum as five voting Loan Committee members. Subparagraph (d)(4)(ii)(D) additionally proposes that there be no actual or appearance of a conflict of interest. For example, a member of the Loan Committee must not participate in deliberations on a loan for which the Third Party Lender is the Committee member's employer.

Subparagraph (d)(5), as proposed, requires the Board to ensure that the CDC's expenses are reasonable and customary, and proposed subparagraph (d)(6) requires the Board to hire an independent auditor to ensure compliance with Loan Program Requirements.

The proposed provisions in subparagraphs (d)(7) and (8) emphasize the requirement that the Board monitor the portfolio and review the semiannual status report from the CDC to ensure that the Board provides appropriate oversight of the CDC's portfolio. SBA proposes to add requirements in subparagraph (d)(9) that the Board ensure that the CDC establishes and maintains adequate reserves to enable the CDC to operate.

As provided in current § 120.825, a CDC must invest in its Area of Operations. Subparagraph (d)(10) of § 120.823 proposes to require that the Board approve all investments of over $2,500 and that the CDC manager approve investments of $2,500 or less in order to ensure that the investments constitute appropriate economic development activity and that such investments do not compromise the adequacy of the reserves. Examples of economic development activities could include non-profit activities such as workforce development programs, lending programs or other like activities in the CDC's Area of Operations.

The Agency proposes to require in subparagraph (d)(11) that the Board establish a policy in the Bylaws of the CDC prohibiting an actual or apparent conflict of interest, and enforce such policy. The agency would expect that the policy would provide, among other things, that no director may participate in deliberations on a loan if the director is employed by or is otherwise associated with the Third Party Lender. Subparagraphs (d)(12) and (d)(13), as proposed, express the Board's retention of accountability for all actions of the CDC, and establishes the responsibility for establishing written internal control polices as set forth in § 120.826. SBA proposes to add subparagraph (d)(14) requiring the CDC's Board of Directors to establish commercially reasonable loan approval policies, procedures, and standards. The CDC's credit approval process and delegations of authority, if any, must be set forth in the Bylaws. In addition, the loan must be credit-approved before the application is submitted to SBA. The proposed rule would require that the Board of Directors, or the Executive Committee, if authorized by the Board, provide credit approval for loans greater than $2,000,000 prior to submission to the agency, as SBA believes that it is important that the Board, or Executive Committee, approve these larger loans. However, SBA recognizes that Boards may not meet frequently enough to provide the needed credit approval in a timely manner prior to submission of an application to SBA and that allowing approval of smaller loans by the Loan Committee would present minimal additional risk to the Agency. Therefore, SBA is proposing to allow Boards to delegate authority to the Loan Committee to provide credit approval of: (1) loans of less than $1 million, and (2) loans of $1 million to $2 million subject to ratification by the Board or the Executive Committee prior to debenture closing. SBA invites comment on this proposal. To further emphasize the responsibilities of the Board, in subparagraph (d)(15), SBA proposes an annual certification by all Board members acknowledging their responsibilities.

In paragraph (e), SBA proposes to add the requirement that the Board must maintain directors' and officers' liability and errors and omissions insurance to protect the CDC. The Agency requires at least $5,500,000 for each occurrence and $5,500,000 in the aggregate per year, as well as a deductible of not more than $50,000 for both directors' and officers' liability insurance and errors and omissions insurance. These coverage amounts correspond to the maximum loan amount. SBA invites comment on the amounts of both the insurance and the deductible.

Section 120.830 Reports a CDC must submit. SBA proposes to revise the requirements for reporting by CDCs in order to improve transparency and accountability and for other purposes discussed in this paragraph. In paragraph (a), SBA proposes adding a requirement that copies of Federal tax returns be submitted in the Annual Report to assist the Agency in reducing risk by reviewing the financial condition of the CDC and compensation of CDC employees. The requirements for the audited or reviewed financial statements are set forth in subparagraph (a)(1) and remain unchanged. In addition, as a matter of practice, SBA does not require a CDC to submit an Annual Report for the year in which it was certified if the CDC is certified by SBA within 6 months of its fiscal year-end, and SBA proposes to reflect this practice in the regulations. In subparagraph (a)(2), SBA proposes to add a requirement for an annual compensation report covering all current and former officers and directors receiving compensation during the covered period, and any current and former employees and independent contractors with total compensation of more than $100,000 during the covered period. For this purpose, total compensation includes all compensation, including salary, bonuses and expenses. Additionally, in subparagraph (a)(3), the Agency proposes to require that the annual report include an annual certification by each of the directors that he or she has read and understands the requirements set forth in the proposed § 120.823. In subparagraph (a)(4), SBA is proposing to require that the CDC report on investments in economic development activities in each State in which the CDC has an outstanding 504 loan. With the exception of the revisions noted above, the reporting requirements for CDCs remain the same.

Section 120.835 Application to expand an Area of Operations. SBA proposes to incorporate subparagraph (c)(1) into paragraph (c) and remove subparagraph (c)(2), which currently requires the CDC to meet the requirements as to membership for each state in a Multi-state expansion, since the proposed revisions to § 120.822 make membership optional.

Section 120.882 Eligible Project costs for 504 loans. SBA proposes to eliminate paragraph (a)(2) of § 120.882, which limits Project expenses eligible for 504 Loan Program financing to those incurred within 9 months prior to receipt by SBA of a complete loan application. (The cost of acquiring land to be used in the Project is not subject to the 9-month restriction.)

For the reasons described above under Background Information, SBA's proposal would permit prior expenses that are directly attributable to the 504 project to be considered eligible project costs regardless of when those expenditures were made. If financing was required for the costs incurred, SBA would determine whether the 504 loan should be made under § 120.882(e) as a 504 project that includes a refinancing component or under § 120.882(a) because the costs are directly attributable to the project.

Section 120.920 Required participation by the Third Party Lender. SBA proposes revising this section to provide that if a Third Party Lender requires collateral in addition to that which the CDC takes, the Third Party Lender, in the event of liquidation, must first apply the proceeds from the sale of the additional collateral to the balance of the Third Party Lender's loan. This marshaling of assets would protect the CDC's position in the Common Collateral (as defined in the proposed revision to this section) and could lead to greater recovery for SBA

Section 120.925 504 Preferences. SBA proposes removing this section, and addressing the concern with respect to the application of the proceeds from additional collateral held by the Third Party Lender in § 120.920 as described above.

Section 121.103 How does SBA determine affiliation? SBA proposes to amend this section to provide that affiliation for 7(a), 504 and microloan loan applicants would be determined under a new § 121.302, as described below, and not under § 121.103.

Section 121.302 What are the standards for determining affiliation for loan applicants?

SBA proposes to redefine ''affiliation'' for the purpose of the business loan programs. Proposed paragraph (a) of § 121.302 contains a statement of general principles of affiliation for business loan applicants and incorporates the exceptions to affiliation set forth in § 121.103(b). Proposed paragraph (b) sets forth the affiliation principles based on ownership. Proposed paragraph (c) describes the effect on affiliation of stock options, convertible securities, and agreements to merge. Proposed paragraph (d) outlines affiliation based upon common management. Proposed paragraph (e) incorporates § 121.103(i) regarding affiliation based on franchise and license agreements. Proposed paragraph (f) requires that each applicant for a 7(a) loan or a 504 loan submit with its application an Affidavit in which discloses all owners of the applicant and the percentage of ownership of each, and any affiliates as determined under this section.

The existing §§ 120.302 through 120.305 are proposed to be redesignated as §§ 120.303 through 120.306, respectively, without any further changes.

Compliance With Executive Orders 13563, 12866, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C., Ch. 35,), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 13563 and Executive Order 12866

The Office of Management and Budget (OMB) has determined that this proposed rule is a ''significant'' regulatory action for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The agency believes it needs to reduce regulatory burdens and expand business loan program access to reinvigorate the programs and facilitate job creation.

2. What are the potential benefits and costs of this regulatory action?

As stated above, the potential benefits of this proposed rule are based on its elimination of unnecessary participation burdens and eligibility criteria. Specifically, the proposed rule would eliminate certain eligibility criteria related to the personal resources of certain people or companies associated with the applicant. It would also exempt the business loan program from certain rules that determine whether an entity is deemed affiliated with an applicant. When an entity is determined to be affiliated with an applicant, then that entity's receipts and employees are added to those of the applicant when determining its size. Thus, certain businesses are deemed to be ineligible for assistance because they are not deemed to be ''small'' for program purposes by virtue of their combined size with affiliated entities. By eliminating unnecessary affiliation tests from the business loan programs, independently owned and controlled small businesses that would otherwise be ineligible for business loan program assistance will become eligible. In addition, the excessive burden related to providing documentation for size evaluation for numerous affiliates now faced by lenders and borrowers would be significantly reduced by the proposed rule.

In the 504 Loan Program, SBA is proposing to eliminate what is commonly referred to as the ''9-month rule''. The 9-month rule essentially states that costs incurred by an applicant that otherwise would be eligible for financing under the 504 Loan Program are presumptively deemed to be ineligible project costs if incurred more than 9 months prior to a complete loan application submitted by an applicant. Also pertaining only to the 504 Loan Program, the proposed rule would revise regulations dealing with corporate governance including eliminating the requirement for CDC membership and emphasizing the responsibility of the board of directors. CDCs participating in the 504 Loan Program would no longer need to maintain a membership, thus eliminating that program participation burden. Requirements for the CDC Board of Directors are clarified and detailed to compensate for the potential loss of oversight that might result from the lack of CDC membership participation. SBA could have allowed CDC Directors to operate without clearly articulated basic standards that are commonly accepted best practices that most CDCs already follow. SBA welcomes comments and suggestions on the benefit of allowing CDC Boards to operate without the basic governance standards and oversight proposed in this rule.

With respect to CDC Board requirements, the agency proposes to establish a minimum quorum of 50% of the Board and to require that the Board set the CDC manager's salary and review all CDC staff salaries. There are additional operational requirements which are discussed more fully in the section-by-section analysis of this proposed rule. It is the agency's view that these rules basically would codify best practices for CDC Board operation and would not significantly add to the burden of being a responsible CDC director. The agency encourages public comment on the Board requirements, especially with respect to any possible significant economic impact, as well as suggestions regarding how to ensure proper Board operations in a less burdensome way.

Finally, there are miscellaneous proposed revisions which clarify or slightly revise exiting regulations with very minor regulatory impact. For example, consistent with current policy, § 120.818 clarifies that CDC requirements apply to for-profit CDCs. Another example is § 120.830, which the agency believes would allow several CDCs to maintain existing affiliations and still qualify for expanded CDC status without impacting the operational requirements of other CDCs. With respect to any of the proposed revisions relating to CDC operational and organizational requirements, the agency welcomes any comments regarding potentially significant impact on CDC operations and views regarding how the agency can responsibly reduce CDC operational and organizational compliance burdens.

3. What alternatives have been considered?

One ''alternative'' would be to eliminate even more regulatory burdens and the agency enthusiastically encourages public comment and suggestions on how that can be done responsibly without substantially increasing the risk of waste, fraud, or abuse of the programs or otherwise threatening the integrity of the business loan program or taxpayer dollars. With respect to the proposed changes to CDC Board of Director requirements, the agency considered allowing CDC directors to operate with virtually no agency oversight or standards, relying on state non-profit corporation laws and state oversight to ensure proper Board performance. This idea was quickly rejected because SBA's review of actual state oversight of non-profit directors and the applicable state law requirements indicated that state oversight and laws would not provide the parameters and oversight necessary for a Federal loan program that potentially puts billions of taxpayer dollars at risk each year.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

The business loan programs operate through the agency's lending partners, which are 7(a) Lenders and CDCs. The agency has held public forums and meetings which allowed it to reach hundreds of its lending partners and gain valuable insight, guidance, and suggestions from many of them and the trade associations which represent many of them. The agency's outreach efforts to engage stakeholders before proposing this rule was extensive.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this proposed rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this proposed rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C., Ch. 35

The SBA has determined that this proposed rule would impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act (PRA), 44 U.S.C. Chapter 35. First, SBA proposes to amend the currently approved CDC Annual Report to require CDCs to report on executive compensation and economic development projects, and to submit a copy of the CDC's tax return. Under the proposed rule, each CDC director must certify that he or she has read and understands the requirements set forth in 13 CFR 120.823.

Second, SBA proposes to require each loan applicant to certify in an Affidavit (the ''Applicant Affidavit on Affiliation'') as to the applicant's affiliation with any other entities. Requiring submission of this Affidavit would significantly reduce the burden on the small businesses and the CDCs as the small businesses applying for a 504 or 7(a) loan would be required to submit certain documentary evidence (e.g., credit reports, financial statements and tax returns) only with respect to their affiliates as defined in the proposed rule. In addition, applicants would be required to identify all owners of the applicant as opposed to each owner of 20% or more interest as is now required only on Form 4, Application for Business Loan.

As a result of these new requirements, SBA proposes to revise the information collections identified below:

1. *Title and Description of Information Collection:* The Certified Development Company (CDC) Annual Report (SBA Form 1253) is the method through which the CDC provides information to SBA on economic development, its financial condition, operations and employment impact. The additional information that would be required to be submitted with the Annual Report is a certification by each CDC director, a report on compensation, and a copy of the CDC's federal tax return. This information collection will also be revised to reflect changes in governance of CDC membership; composition of CDC board of directors and increases to insurance coverage.

OMB Control Number: 3245–0074.

Description of and Estimated Number of Respondents: All CDCs must provide an annual report. Currently there are approximately 260 CDCs. There is 1 form per respondent. SBA has prepared an estimate based on the fact that respondents keep the information requested in the ordinary course of business (all the loan information including jobs created and retained.).

Estimated Number of Responses: 260 (260 CDCs × 1 form per respondent = 260).

Estimated Time per Response: SBA estimates the time needed to complete this collection will average 28 hours.

Total Estimated Hour Burden: 260 × 28 hours = 7,280 total annual burden hours. This is 168 hours less than the current OMB inventory (7,488).

2. *Title and Description of Information Collection:* Applicant Affidavit on Affiliation as to applicant's affiliation with any other entities. This new information collection, as described above, will be submitted with the following applications:

(i) Application for Section 504 Loan (SBA Form 1244).

OMB Control Number: 3245–0071

Description of and Estimated Number of Respondents: The Applicant would execute this Affidavit which would be part of exhibit 12 to SBA Form 1244.

Based upon FY 2011 loan totals, SBA estimates that 6,800 respondents will complete the Affidavit annually (4,625 ASM submission + 2,75 standard submissions = 6,800).

Estimated Number of Responses: 6,800 based upon the FY 2011 loan totals.

Estimated Time per Response: SBA estimates that each applicant would require 15 minutes to complete the new proposed form, thereby decreasing the total estimated burden for this collection, which depending on the Lenders status, is currently 2.25 hours or 2.45 hours per application.

Total Estimated Burden: 15,736 hours, which is identical to current OMB inventory.

(ii) Application for Business Loan (SBA Form 4–I and 4 Schedule A).

OMB Control Number: 3245–0016.

Description of and Estimated Number of Respondents: 17,300 Applicants for 7(a) loans based upon FY 2011 totals.

Estimated Number of Responses: 32,130 based upon the FY 2011 totals.

Estimated Time per Response: SBA estimates that each applicant would require 15 minutes to complete the new proposed form, which would result in a corresponding reduction in the current burden for this collection.

Total Estimated Burden: 206,340 hours (8.625 hours less than current OMB inventory).

(iii) SBA Express, Export, Express, Small Loan Advantage, PLP-CapLines, and Pilot Loan Programs (Patriot Express and Dealer Floor Plan) Borrower Information Form (SBA Form 1919, 1920SX (A, B & C) and 2237).

OMB Control Number: 3245–0348.

Description of and Estimated Number of Respondents: 4,450 Applicants for SBA Express, Export Express, Small Loan Advantage, PLP-Caplines and Pilot Loan Programs based upon FY 2011 totals.

Estimated Number of Responses: 117.900.

Estimated Time per Response: 12 minutes.

Total Estimated Burden: 22,620 hours (36,236 hours less than current OMB inventory).

(iv) Lender Advantage (SBA Form 2301–A, B & C).

OMB Control Number: 3245–0361.

Description of and Estimated Number of Respondents: 15,900 Applicants for SBA's Lender Advantage Loan Initiative Program based upon a projection of program activity during FY 2013.

Estimated Number of Responses: 15,900 respondents based upon a projection of program activity during FY 2013.

Estimated Time per Response: SBA estimates that each applicant would require 30 minutes to complete the new proposed form, which would result in a reduction in the current burden hours for this collection.

Total Estimated Burden: 46,095 hours (2,895 hours less than current OMB inventory).

(v) PCLP Quarterly Loan Reserve Report and PCLP Guarantee Request (SBA Forms 2233 and 2234–A, B & C).

OMB Control Number: 3245–0346.

Description of and Estimated Number of Respondents: 19 PCLP Lenders.

Estimated Number of Responses: 1,700 respondents based on an estimate of the loan volume.

Estimated Time per Response: SBA estimates that each applicant would require 50 minutes to complete the new proposed form, which would result in a reduction in the current burden hours for this collection.

Total Estimated Burden: 1,402 hours less than current OMB inventory.

SBA has submitted these amended collections to the Office of Management and Budget (OMB) for review, and invites the public to comment on the proposed changes, particularly on: (1) Whether the proposed collection of information is necessary for the proper performance of the program, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Please send comments by the closing date for comment for this interim final rule to SBA Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20503, and to Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking proposal, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment an initial regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Although the rulemaking will impact all of the approximately 4,500 7(a) Lenders (some of which are small) and all of the approximately 260 CDCs (all of which are small), SBA does not believe the impact will be significant. As stated above, the proposed rule will expand access to the business loan program but this will not increase the burden of the agency's lending partners because they choose their own level of program participation (i.e., 7(a) Lenders and CDCs are not required to process more loan applications simply because more small businesses are eligible to apply for a business loan). For those CDCs and lenders that process more businesses loans, the benefit of the increase in revenue will far exceed any increased burden. In addition, the proposed elimination of certain program participation requirements would not have a substantial economic impact or cost on the small business borrower, lender or CDC.

SBA believes that this rule is SBA's best available means for facilitating American job preservation and creation by removing unnecessary regulatory requirements. Since the main purpose of this proposed rule is to reduce unnecessary regulatory burdens and program eligibility criteria, a review of the preamble sections above will provide more detailed explanations regarding how and why this proposed rule will reduce regulatory burdens and responsibly increase program participation flexibility. For these reasons, SBA has determined that there is no significant impact on a substantial number of small entities. SBA invites comment from members of the public who believe there will be a significant impact either on CDCs, or their borrowers.

List of Subjects

13 CFR Part 120

Community development, Equal employment opportunity, Loan programs—business, Reporting and recordkeeping requirements, Small business.

13 CFR Part 121

Grant programs-business, Individuals with disabilities, Loan-programs-business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 120 and 121 as follows:

PART 120—BUSINESS LOANS

■ 1. The authority for 13 CFR part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h) and note, 636(a), (h) and (m), 650, 687(f), 696(3) and 697(a) and (e); Pub. L. 111–240, 124 Stat. 2504.

§ 120.102 [Removed]

■ 2. Remove § 120.102.

§ 120.820 [Redesignated as § 120.816]

■ 3. Redesignate § 120.820 as § 120.816.

■ 4. Add § 120.818 to read as follows:

§ 120.818 Applicability to existing for-profit CDCs.

Unless expressly provided otherwise in the regulations, any Loan Program Requirement that applies to non-profit CDCs also applies to for-profit CDCs.

■ 5. Revise newly redesignated § 120.820 to read as follows:

§ 120.820 CDC Affiliation.

(a) A CDC must be independent and may not be affiliated (as determined in accordance with § 121.103) with any Person (as defined in § 120.10) except as permitted under this section.

(b) A CDC may be affiliated with an entity whose function is economic development in the same Area of Operations and that is either a non-profit entity or a State or local government or political subdivision (e.g., council of governments).

(c) A CDC that is affiliated with a 7(a) Lender may continue such affiliation if:

(1) The affiliation was in effect as of [EFFECTIVE DATE OF FINAL RULE], and

(2) The 7(a) Lender is either a state development company approved by SBA as of November 6, 2003, or a credit union.

(d) A CDC must not be affiliated with, or directly or indirectly invest in or finance, another CDC.

§ 120.822 [Removed]

■ 6. Remove § 120.822.

■ 7. Revise § 120.823 to read as follows:

§ 120.823 CDC Board of Directors.

(a) The CDC, whether for-profit or nonprofit, must have a Board of Directors with at least eleven (11), and no more than twenty-five (25), voting directors. The Board must be actively involved in encouraging economic development in the Area of Operations. The initial Board may be created by any method permitted by applicable State law. At a minimum, the Board must have directors with background and expertise in internal controls, financial risk management, commercial lending, legal issues relating to commercial lending, and corporate governance. Directors may be either currently employed or retired. A CDC must have at least one voting director that represents the economic, community or workforce development fields, and at least two voting directors that represent the commercial lending field.

(b) At least two voting members of the Board of Directors, other than the CDC manager, must possess commercial lending experience satisfactory to SBA. When the Board votes on SBA loan approval or servicing actions, at least two voting Board members, with such commercial lending experience, other than the CDC manager, must be present and vote.

(c) The Board of Directors must meet at least quarterly and shall be responsible for the actions of the CDC and any committees established by the Board of Directors. In addition, the Board of Directors is subject to the following requirements:

(1) Except for the CDC manager, no person on the CDC's staff may be a voting director of the Board;

(2) A quorum must be present to transact business. The quorum shall be set by the CDC but shall be no less than 50% of the voting members of the Board of Directors;

(3) Attendance at meetings may be through any format permitted by State law;

(4) Directors from the commercial lending fields must comprise less than 50% of the representation on the Board; and

(5) A CDC shall not permit more than one individual who is employed by or serves on the Board of Directors of a single entity (including the entity's affiliates) to serve on the CDC's Board of Directors.

(d) The Board shall have and exercise all corporate powers and authority and be responsible for all corporate actions and business. There must be no actual or appearance of a conflict of interest with respect to any actions of the Board. The Board is responsible for ensuring that the structure and operation of the CDC, as set forth in the Bylaws, comply with SBA's Loan Program Requirements. The responsibilities of the Board include, but are not limited, to the following:

(1) Approving the mission and the policies for the CDC;

(2) Hiring, firing, supervising and annually evaluating the CDC manager;

(3) Setting the salary for the CDC manager and reviewing all salaries;

(4) Establishing committees, at its discretion, including the following:

(i) *Executive Committee.* To the extent authorized in the bylaws, the Board of Directors may establish an Executive Committee. The Executive Committee may exercise the authority of the Board; however, the delegation of its authority does not relieve the Board of its responsibility imposed by law or Loan Program Requirements. No further delegation or redelegation of this authority is permitted. If the Board establishes an Executive Committee and delegates any of its authority to the Executive Committee as set forth in the bylaws of the CDC, the Executive Committee must:

(A) Be chosen by and from the Board of Directors from the Board; and

(B) Meet the same organizational and representational requirements as the Board of Directors, except that the Executive Committee must have a minimum of five voting members who must be present to conduct business.

(ii) *Loan Committee.* The Board of Directors may establish a Loan Committee. The Loan Committee may exercise the authority of the Board only as set forth in paragraphs (d)(4)(ii)(A) through (D) of this section; however, the delegation of its authority does not relieve the Board of its responsibility imposed by law or Loan Program Requirements. If the Board of Directors chooses to establish a Loan Committee, no CDC staff or manager may serve on the Loan Committee. The Loan Committee must:

(A) Be chosen by the Board of Directors from the membership (if any), shareholders or the Board;

(B) Have a quorum of at least five (5) committee members authorized to vote;

(C) Have at least two members with commercial lending experience satisfactory to SBA; and

(D) Have no actual or appearance of a conflict of interest, including for example, a Loan Committee member participating in deliberations on a loan for which the Third Party Lender is the member's employer or the member is otherwise associated with the Third Party Lender.

(5) Ensuring that the CDC's expenses are reasonable and customary;

(6) Hiring directly an independent auditor to provide the financial statements in accordance with Loan Program Requirements;

(7) Monitoring the CDC's portfolio performance on a regular basis;

(8) Reviewing a semiannual report on portfolio performance from the CDC manager, which would include, but not be limited to, asset quality and industry concentration;

(9) Ensuring that the CDC establishes and maintains adequate reserves for operations;

(10) Ensuring that the CDC invests in economic development in each of the States in its Area of Operations in which it has a portfolio; and:

(i) For investments of $2,500 or less: The CDC manager may approve such investments; and

(ii) For investments over $2,500: The Board must approve each such investment.

(11) Establishing a policy in the Bylaws of the CDC prohibiting an actual conflict of interest or the appearance of same, and enforcing such policy;

(12) Retaining accountability for all of the actions of the CDC;

(13) Establishing written internal control polices, in accordance with § 120.826;

(14) Establishing commercially reasonable loan approval policies, procedures, and standards. The Bylaws must include a credit approval process and set forth any delegations of authority to the Loan Committee and Executive Committee, if either Committee has been established. All 504 loan applications must have credit approval prior to submission to the Agency. The Loan Committee, if established, may be delegated the authority to provide credit approval for loans up to $2,000,000 but, for loans of $1,000,000 to $2,000,000, the Loan Committee's action must be ratified by the Board or Executive Committee prior to Debenture closing. Only the Board or Executive Committee, if authorized by the Board, may provide credit approval for loans greater than $2,000,000.

(15) All members of the Board of Directors must annually certify in writing that they have read and understood this section, and copies of the certification must be included in the Annual Report to SBA.

(e) The Board of Directors shall maintain Directors' and Officers' Liability and Errors and Omissions insurance in an amount of at least $5,500,000 per occurrence and in the aggregate per year with a deductible of not more than $50,000.

■ 8. Amend § 120.830 by revising paragraph (a) to read as follows:

§ 120.830 Reports a CDC must submit.

* * * * *

(a) An Annual Report within one hundred-eighty days after the end of the CDC's fiscal year (to include Federal tax returns for that year). A CDC that is certified by SBA within 6 months of the CDC's fiscal year-end is not required to submit an Annual Report for that year. The Annual Report must include, but is not limited to, the following:

(1) *Audited or Reviewed Financial Statements* as required in § 120.826(c) and (d) for the CDC and any affiliates or subsidiaries of the CDC.

(i) Audited financial statements must, at a minimum, include the following:

(A) Audited balance sheet;

(B) Audited statement of income (or receipts) and expenses;

(C) Audited statement of source and application of funds;

(D) Such footnotes as are necessary to understand the financial statements;

(E) Auditor's letter to management on internal control weaknesses; and

(F) The auditor's report.

(ii) Reviewed financial statements must, at a minimum, include the following:

(A) Balance sheet;

(B) Statement of income (or receipts) and expenses;

(C) Statement of source and application of funds;

(D) Such footnotes as are necessary to an understanding of the financial statements; and

(E) The accountant's review report.

(2) *Report on compensation.* CDCs are required to provide detailed information on total compensation (including salary, bonuses and expenses) paid within the CDC's most recent tax year for current and former officers and directors, and for current and former employees and independent contractors with total compensation of more than $100,000 during that period.

(3) *Certification of members of the Board of Directors.* Written annual certification by each Board member that he or she has read and understands the requirements set forth in § 120.823.

(4) *Report on investment in economic development.* Written report on investments in economic development in each State in which the CDC has an outstanding 504 loan.

* * * * *

■ 8. Amend § 120.835 by revising paragraph (c) to read as follows:

§ 120.835 Application to expand an Area of Operations.

* * * * *

(c) *Multi-State CDC Expansion.* A CDC may apply to be a Multi-State CDC only if the state the CDC seeks to expand into is contiguous to the State of the CDC's incorporation and the CDC has a loan committee meeting the requirement of § 120.823.

■ 9. Amend § 120.882 by revising paragraph (a) to read as follows:

§ 120.882 Eligible Project costs for 504 loans.

* * * * *

(a) Costs directly attributable to the Project including expenditures incurred by the Borrower (with its own funds or from a loan) to acquire land used in the Project, or for any other expense directly attributable to the Project, prior to applying to SBA for the 504 loan;

* * * * *

■ 10. Amend § 120.920 by adding two sentences at the end of paragraph (b) to read as follows:

§ 120.920 Required participation by the Third Party Lender.

* * * * *

(b) * * * The 504 loan is usually collateralized by a second lien on Project Property (''Common Collateral''). If the Third Party Lender requires a lien on collateral in addition to the Common Collateral, in the event of liquidation, the Third Party Lender must apply the proceeds from the sale of such additional collateral to the balance outstanding on the Third Party Loan prior to the application of proceeds from the sale of the common collateral to the Third Party Loan.

§ 120.925 [Removed]

■ 11. Remove § 120.925.

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 12. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 636(b), 662, and 694a(9).

■ 13. Amend § 121.103 by removing and reserving paragraph (a)(7) and adding paragraph (a)(8) to read as follows:

§ 121.103 How does SBA determine affiliation?

(a) * * *

(8) For applicants for 7(a) loans, 504 loans and microloans, affiliation is determined under § 121.302 instead of this § 121.103.

* * * * *

§§ 121.302 through 121.305 [Redesignated as §§ 121.303 through 121.306]

■ 14. Redesignate §§ 121.302 through 121.305 as §§ 121.303 through 121.306 and add a new § 121.302 to read as follows:

§ 121.302. Principles of affiliation to determine size of applicants for 7(a) loans, 504 loans, and microloans.

(a) *General principles of affiliation.* Generally, affiliation exists when one concern controls or has the power to control another, or when a third party (or parties) controls or has the power to control both concerns. Control may arise through ownership, management, or other relationships or interactions between the parties. In determining an applicant's size, SBA counts the receipts, employees, or other measure of size of the applicant whose size is at issue and all of its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit. The exceptions to affiliation coverage set forth in § 121.103(b) are incorporated into this section by reference. SBA will not consider negative control, by itself, as set forth in § 121.103(a)(3) of this part to create affiliation under this section. In determining affiliation under this section, SBA will consider the totality of the circumstances to determine whether affiliation exists, even though no single factor may be sufficient to constitute affiliation.

(b) *Affiliation based on ownership.* For determining affiliation based on ownership:

(1) A concern is an affiliate of a person (including any individual, concern or other entity) that owns or has the power to control more than 50 percent of the voting equity of the concern. If no person owns or has the power to control more than 50 percent of a concern's voting equity, SBA will deem the Chief Executive Officer (CEO) or President of the concern (or other officers, managing members, partners, or directors who control the management of the concern) to be in control of the concern.

(2) If any two or more persons (including any individual, concern or other entity) collectively own or have the power to control more than 50 percent of the voting equity of two or more concerns (the ''collective owners''), then there is affiliation between such concerns and between each concern and each collective owner.

(c) *Affiliation arising under options, convertible securities, and agreements to merge.* In determining size, SBA considers options, convertible securities, and agreements to merge (including agreements in principle) to have a present effect on the power to control a concern. SBA treats such options, convertible securities, and agreements as though the rights granted have been exercised.

(1) Agreements to open or continue negotiations towards the possibility of a merger or a sale of stock or other equity at some later date are not considered ''agreements in principle'' and are thus not given present effect.

(2) Options, convertible securities, and agreements that are subject to conditions precedent which are incapable of fulfillment, speculative, conjectural, or unenforceable under state or Federal law, or where the probability of the transaction (or exercise of the rights) occurring is shown to be extremely remote, are not given present effect.

(3) An individual, concern or other entity that controls one or more other concerns cannot use options, convertible securities, or agreements to appear to terminate such control before actually doing so. SBA will not give present effect to individuals', concerns' or other entities' ability to divest all or part of their ownership interest in order to avoid a finding of affiliation.

(d) *Affiliation based on common management.* Affiliation exists where the CEO or President of a concern (or other officers, managing members, partners or directors who control the management of the concern) also controls the management of one or more other concerns. Affiliation also arises where a single person or entity that controls the board of directors of one concern also controls the board of directors or management of one or more other concerns.

(e) *Affiliation based on franchise, license and similar agreements.* If the applicant is a franchisee, licensee or other similar entity, the provisions of § 121.103(i) apply.

(f) *Affidavit of applicant.* Each applicant for a 7(a) loan or a 504 loan must include as part of its application for financial assistance an Affidavit in which it discloses all owners of the applicant and their percentage of ownership and discloses any affiliates as determined under this section. The Affidavit must be executed by the applicant's CEO or equivalent.

Dated: February 19, 2013.

Karen G. Mills,

Administrator.

[FR Doc. 2013–04221 Filed 2–22–13; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0145; Directorate Identifier 2012–SW–059–AD]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. and Bell Helicopter Textron Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model AB412 and AB412 EP, and Bell Helicopter Textron (Bell) Model 412, 412CF, and 412EP helicopters with certain DART Aerospace Ltd. (Dart) high gear aft crosstubes (crosstube) installed. This proposed AD would require adding a life limit of 10,000 landings to the crosstube and removing from service any crosstubes with more than 10,000 accumulated landings. This proposed AD is prompted by five separate reports of crosstube failures. The actions in this proposed AD are intended to prevent failure of the crosstube and subsequent collapse of the landing gear.

DATES: We must receive comments on this proposed AD by April 26, 2013.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Docket:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Fax:* 202–493–2251.
- *Mail:* Send comments to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to the ''Mail'' address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Operations Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the economic evaluation, any comments received, and other information. The street address for the Docket Operations Office (telephone 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

For service information identified in this proposed AD, contact Dart Aerospace LTD., 1270 Aberdeen St, Hawkesbury, ON, K6A 1K7, Canada; telephone: 1 613 632 5200; Fax: 1 613 632 5246; or at *www.dartaero.com.* You may review the referenced service information at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

FOR FURTHER INFORMATION CONTACT: Jeffrey Zimmer, Airframe Engineer, New York Aircraft Certification Office, Engine and Propeller Directorate, FAA, 1600 Stewart Ave., Suite 410, Westbury, New York 11590; telephone (516) 228–7306; email *jeffrey.zimmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the