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SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN: 3245-AG76

Economic Development Investments for Certified Development Companies

AGENCY: U.S. Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The U.S. Small Business Administration (SBA) is soliciting comments on whether Certified Development Companies (CDCs) should be required to invest specific amounts in local economic development activities (other than lending through the CDC program) and to reserve specific amounts for their future operations. SBA is also soliciting input into what types of activities may qualify as economic development activities.

DATES: Comments must be submitted on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by RIN 3245-AG76, by any of the following methods: (1) Federal Rulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments; or (2) Mail/Hand Delivery/Courier: U.S. Small Business Administration, Attn: Linda Reilly, Acting Director, Office of Financial Assistance, 409 Third Street, SW, 8th Floor, Washington, DC 20416. All comments will be posted on www.regulations.gov. If you wish to submit confidential business information (CBI) as defined in the User Notice at www.regulations.gov, you must submit such information to the U.S. Small Business Administration, Attn: Linda Reilly, Acting Director, Office of Financial Assistance, 409Third Street, SW, 8th Floor, Washington, DC 20416, or send an email to linda.reilly@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 your information and determine whether it will make the information public.

FOR FURTHER INFORMATION CONTACT: Linda Reilly, Acting Director, Office of Financial Assistance, U.S. Small Business Administration, 409 3rd Street, SW, 8th Floor, Washington, DC 20416, telephone number (202) 205-9949 or linda.reilly@sba.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Certified Development Company (CDC) program, also referred to as the 504 Loan Program, is authorized pursuant to Title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 et seq. 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 (504 Loans) 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 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 with the goal of facilitating the creation and retention of jobs and local economic development. There are over 260 CDCs nationwide each with a defined Area of Operations covering a specific geographic area. The Area of Operations for most CDCs is the state in which they are incorporated.

Under 13 CFR 120.825, CDCs are required to be able to sustain their operations continuously with reliable sources of funds, such as income from services rendered and contributions from government or other sponsors. This regulation also provides that any funds generated from loan activity in the 504 Loan Program that remain after payment of staff and overhead expenses (such funds referred to herein as “remaining funds”) must be retained by the CDC as a reserve for future operations or for investment in other local economic development activity in the CDC’s Area of Operations. In addition, on March 21, 2014, SBA issued a Final Rule (79 FR 15641) that requires each CDC’s Board of Directors to ensure that the CDC establishes and maintains adequate reserves for operations (13 CFR 120.823(d)(9)) and invests in economic development in each State in its Area of Operations where the CDC has outstanding 504 Loans (13 CFR 120.823(d)(10)). Accordingly, in reading 13 CFR 120.823(d)(9) and (10) and 120.825 together, each CDC’s Board of Directors must ensure that any remaining funds are either retained as a reserve or invested in the CDC’s community, but the current rules do not require the CDC to retain or invest any specific amounts or percentages.

CDCs have requested that SBA provide guidance on the acceptable types and amounts of investments that should apply to the remaining funds. To address the issue raised by the CDCs, SBA is considering whether to issue a future Proposed Rulemaking that would require CDCs to set aside a certain amount of their revenues for investing in other local economic development activities. SBA is also considering whether the rulemaking should address minimum and/or maximum requirements with respect to the size of the reserve that a CDC retains for its future operations. As stated above, 13 CFR 120.825 requires a CDC "to be able to sustain its operations continuously, with reliable sources of funds," and a minimum reserve requirement would assist CDCs in complying with this provision. Excessive reserves, however, could limit the amount a CDC would have available for investing in local economic development activities. To develop a proposed rule to address these issues, SBA needs additional information and invites interested parties to provide it by responding to the questions set forth below.

Finally, SBA is considering providing guidance, through an agency directive (e.g., Standard Operating Procedure, Procedural or Policy Notice), on what constitutes acceptable types of investment in other local economic development activities under 13 CFR 120.825, and is soliciting comments on how to define investments in economic development activity.

II. Comments Requested

To assist SBA in addressing the above issues, SBA requests comments from interested parties on the following questions:

1. What percentage of the CDC's 504 Loan Program revenues do remaining funds typically represent at the end of the CDC's fiscal year?
2. Should SBA require CDCs to use a certain amount or percentage of their remaining funds to invest in other local economic development activity in the CDC's Area of Operations? Please provide reasons for your response.

3. If the answer to question 2 is yes, how should the amount required to be invested in other local economic development activity in the CDC's Area of Operations be calculated? Some possibilities could include a percentage of the original loan amount of the CDC's 504 portfolio, a percentage of the current outstanding loan amount of the CDC's 504 portfolio, a percentage of the annual fees received by the CDC as a result of its 504 lending, or a percentage of the CDC's remaining funds. Should the percentage vary depending upon the dollar value of the CDC's portfolio or other factors? If so, describe how the percentage should vary and upon what factors.
4. Should SBA require CDCs to retain a minimum amount as a reserve for future operations if there are any remaining funds? If not, why not?
5. If the answer to question 4 is yes, how should the amount of a CDC's required reserve be calculated? Some possibilities could include a percentage of the original loan amount of the CDC's 504 portfolio, a percentage of the current outstanding loan amount of the CDC's 504 portfolio, a percentage of the annual fees received by the CDC as a result of its 504 lending, or a percentage of the CDC's remaining funds. Another approach would be to calculate the required reserve as a dollar amount equal to at least six months, but no more than 12 months, of staff and overhead expenses of the CDC.
6. Should SBA limit the amount that CDCs may retain as a reserve for future operations? If not, why not? If yes, what would be a reasonable maximum amount to allow as a reserve?

7. Should a CDC be able to decide that the reserve option would be a more prudent use of its remaining funds than economic development investments to ensure that it has the ability to "sustain its operations continuously"? Why or why not?
8. Should SBA require CDCs to first apply any remaining funds to the reserve for future operations before using any remaining funds for investments? Please provide reasons for your response.
9. What requirements, if any, should apply to a CDC's remaining funds if it voluntarily decertifies or is removed from the 504 Loan Program? Should the CDC be required to invest these funds in local economic development activities prior to decertification or removal?
10. What types of economic development activities should be included in the definition of "acceptable investments in economic development"? Are there any activities that should not be included in the definition? Examples of such acceptable investments in economic development could include loans, grants or other forms of direct financial support that are issued by the CDC for: (1) Other federal, state or local lending programs, such as microlending or revolving loan funds; (2) Small Business Development Centers; (3) business incubators; (4) industrial development; and (5) other non-profit economic development entities. Should the definition include business or technical procurement assistance provided by the CDC or paid for by the CDC?

Interested parties are invited to provide any other comments that they may have relating to the issues described in this Advance Notice of Proposed Rulemaking. We ask that you provide a brief justification for any suggested changes.

Dated: January 7, 2016.

Maria Contreras-Sweet,
Administrator.

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