



## **SMALL BUSINESS ADMINISTRATION**

**[Docket No.: SBA-2018-0010]**

### **Development Company Loan Program – Job Creation and Retention**

#### **Requirements; Additional Areas for Higher Portfolio Average**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notification of changes to Development Company Program; request for comments.

**SUMMARY:** The Small Business Administration (SBA) is changing the job creation or retention requirements under its Development Company Loan Program (504 Loan Program) by increasing the dollar amounts used in calculating the number of jobs that must be created or retained for each 504 Project and for the portfolio average of each Certified Development Company. In addition, SBA is designating additional areas for application of the higher portfolio average.

**DATES:** *Applicability Date:* The job creation or retention requirements and the designation of the additional areas that are described in this document will apply to all 504 loans that are approved under the 504 Loan Program on or after [INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE *FEDERAL REGISTER*].

*Comment Date:* SBA must receive comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments, identified by Docket No. SBA-2018-0010, by any of the following methods: (1) Federal eRulemaking Portal: <https://www.regulations.gov>, following the instructions for submitting comments; or (2)

Mail/Hand Delivery/Courier: Babak Hosseini, Finance and Loan Specialist, Office of Financial Assistance, U.S. Small Business Administration, 409 3<sup>rd</sup> Street, SW, Washington DC 20416.

SBA will post all comments on <https://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <https://www.regulations.gov>, you must submit such information to U.S. Small Business Administration, 409 3<sup>rd</sup> Street, SW, Washington, DC 20416, Attn: Babak Hosseini, Finance and Loan Specialist; or send an email to [babak.hosseini@sba.gov](mailto:babak.hosseini@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:** Babak Hosseini, Finance and Loan Specialist, Office of Financial Assistance, U.S. Small Business Administration; telephone: 202-205-7076; email: [babak.hosseini@sba.gov](mailto:babak.hosseini@sba.gov).

**SUPPLEMENTARY INFORMATION:** The 504 Loan Program is an SBA financing program authorized under Title V of the Small Business Investment Act of 1958 (the SBIAct), 15 U.S.C. 695 et seq. The purpose of the 504 Loan Program is to foster economic development and to create or preserve job opportunities in both urban and rural areas by providing long-term financing for small business concerns. See section 501(a) of the SBIAct, 15 U.S.C. 695(a). Under the 504 Loan Program, loans are made to small business applicants by Certified Development Companies (CDCs), which are certified and regulated by SBA to promote economic development within their community. In general, a project in the 504 Loan Program (a 504 Project) is financed through: a loan

obtained from a private sector lender with a senior lien covering at least 50 percent of the project cost; a loan obtained from a CDC (a 504 Loan) with a junior lien covering up to 40 percent of the total cost (backed by a 100 percent SBA-guaranteed debenture); and a contribution from the Borrower of at least 10 percent equity.

To qualify for financing under the 504 Loan Program, each 504 Project must satisfy one of the economic development objectives or public policy goals set forth in sections 501(d)(1) through (3) of the SBIAct. Under section 501(d)(1), a Project is eligible for 504 financing if it creates job opportunities within two years of completion of the Project or if it preserves jobs attributable to the Project. To satisfy this objective under current requirements, each 504 Project must create or preserve one job for every \$65,000 guaranteed by SBA; in the case of a small manufacturing Project, the amount is \$100,000. See section 501(e)(1) of the SBIAct and 74 FR 16432 (April 10, 2009).

If the Project is eligible for financing under one of the objectives or goals set forth in section 501(d)(2) or (3), the Project need not satisfy the job creation or preservation criteria described above, but the CDC's overall portfolio of outstanding debentures must meet or exceed the job creation or preservation criteria of one job for every \$65,000 guaranteed by SBA. See section 501(e)(2) of the SBIAct and 74 FR 16432 (April 10, 2009). In addition, for projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas (as determined by the Secretary of Labor), and for other areas designated by SBA, the CDC's portfolio may average not more than \$75,000 per job created or retained. See section 501(e)(3) of the SBIAct; 74 FR 16432 (April 10, 2009). (Loans for Projects of small manufacturers are excluded from the overall portfolio calculations.)

In the application for a loan under the 504 Loan Program, the borrower enters the number of jobs to be created or retained as a result of the Project and the CDC verifies that the Project meets the job creation or retention requirements. In addition, the job impact data is entered into SBA's database, and the application data combined with data from annual CDC reports is used to report the total number of jobs created or retained.

The SBIAct authorizes SBA to develop the job creation or job preservation criteria that apply to the 504 Loan Program. See section 501(d) of SBIAct (last freestanding paragraph after paragraph 501(d)(3)(L)). SBA's regulations provide that "[a] Project must create or retain one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a Federal Register notice." 13 CFR 120.861. SBA's regulations also provide that "[a] CDC's portfolio must maintain a minimum average of one Job Opportunity per an amount of 504 loan funding that will be specified by SBA from time to time in a Federal Register notice." 13 CFR 120.829(a).

The standard of one job for every \$65,000 guaranteed by SBA, which applies to both individual Projects and to the CDC's overall portfolio average, has been in effect since it was adopted in 2009. See section 504(b) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. In addition, the standards for both (1) Projects of small manufacturers, and (2) Projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas (as determined by the Secretary of Labor), and other areas designated by the Administrator of SBA, have not been changed since they were first enacted in 2004 by section 105 of the Small Business Reauthorization and Manufacturing Assistance Act of 2004, Pub. L. 108-447. For small manufacturing Projects, the standard is one job for every \$100,000

guaranteed by SBA; for Projects in Alaska, Hawaii and other designated areas, the standard is that the CDC's portfolio may average not more than \$75,000 per job created or retained.

Although the job creation or retention standards for the 504 Loan Program have not been increased since 2009, and in some cases earlier, the Consumer Price Index for All Urban Consumers has increased 19% from 2009 through August 2018 according to the Bureau of Labor Statistics of the U.S. Department of Labor. Accordingly, pursuant to 13 CFR 120.829(a) and 120.861, SBA is modifying the Job Opportunity requirements as follows:

(1) A Project must create or retain one Job Opportunity per \$75,000 guaranteed by SBA except that, in the case of a Project of a small manufacturer, the Project must create or retain one Job Opportunity per \$120,000 guaranteed by SBA;

(2) For Projects that are eligible under 13 CFR 120.862, "Other economic development objectives," a CDC's portfolio must reflect an average of one Job Opportunity for every \$75,000 guaranteed by SBA; and

(3) For Projects in Alaska, Hawaii, State-designated enterprise zones, empowerment zones and enterprise communities, labor surplus areas (as determined by the Secretary of Labor), and for other areas designated by SBA, the CDC's portfolio may average not more than \$85,000 per job created or retained.

In addition, pursuant to section 501(e)(3) of the SBI Act, 15 U.S.C. 695(e)(3), SBA is designating "Opportunity Zones" as additional areas for which the higher portfolio average described in paragraph (3) above would apply. An Opportunity Zone is an economically distressed community that has been nominated by the State and certified

by the Secretary of the U.S. Treasury as a community in which new investments, under certain conditions, may be eligible for preferential tax treatment. More information and a list of Opportunity Zones for all States are available at <https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx>.

SBA has determined that the changes described in this Notice should apply immediately to any 504 Loan that is approved on or after [INSERT DATE OF PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER] in order to give CDCs and small business applicants the benefits of these changes as soon as possible and because neither the new job creation/retention requirements nor the additional areas designated for application of the higher portfolio average will adversely affect either CDCs or their small business applicants.

SBA invites public comments on these new job creation or preservation standards and the designation of additional areas for application of the higher portfolio average described above. Please clearly identify paper and electronic comments as “Public Comments on 504 Loan Program’s Job Opportunity Requirements, Docket No. SBA-2018-0010” and submit them by one of the methods identified in the ADDRESSES section of this document. SBA will consider the comments and determine whether any revisions are necessary.

Authority: 15 U.S.C. 695(d); 13 CFR 120.829(a) and 120.861.

Dated: October 29, 2018.

**Linda E. McMahon,**

*Administrator.*

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