

# 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.

## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2635

RIN 3209-AA50

#### Notice and Request for Comments: Legal Expense Fund Regulation

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Advance notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** The U.S. Office of Government Ethics invites comments on this advance notice of proposed rulemaking (ANPRM) for consideration in developing a legal expense fund regulation.

**DATES:** Comments must be received by June 14, 2019.

**ADDRESSES:** Email: [usoge@oge.gov](mailto:usoge@oge.gov); Fax: (202) 482-9237; Mail/Hand Delivery/Courier: Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005-3917.

**FOR FURTHER INFORMATION CONTACT:** Rachel McRae, Associate Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005-3917; Telephone: (202) 482-9300; TTY: (800) 877-8339; FAX: (202) 482-9237.

**SUPPLEMENTARY INFORMATION:** There is currently no statutory or regulatory framework in the executive branch for establishing a legal expense fund, and the U.S. Office of Government Ethics (OGE) has not approved or disapproved any specific legal expense funds. In the legislative branch, legal expense funds are governed by House and Senate legal expense fund regulations. See House Committee on Ethics, "Contributions to a Legal Expense Fund," U.S. House of Representatives, <http://ethics.house.gov/contributions-legal-expense-fund>; and Senate Select Committee on Ethics, Senate Ethics Manual, Government Printing Office, 2003, <https://www.ethics.senate.gov/downloads/pdf/manual.pdf>, pages 30-31.

OGE's role has been limited to providing guidance to help ensure that executive branch employees who may receive distributions from a legal expense fund will be in compliance with the ethics laws and rules if they accept such a distribution. See OGE Legal Advisory LA-17-10 (2017). However, this limited approach to legal expense funds does not fully address potential appearance concerns with the creation and operation of legal expense funds for the benefit of executive branch employees.

Accordingly, OGE is seeking stakeholder input through this advance notice of proposed rulemaking, to request input on issues specifically related to legal expense funds, including, but not limited to, the following topics:

1. Donors and donations to legal expense funds. For example:
  - a. Should there be limitations on the types of donors to legal expense funds? If so, what should those limitations be? Why?
  - b. Should there be contribution limits to legal expense funds? If so, what should that amount be? Why?
  - c. Should donations of *pro bono* legal services to legal expense funds be permitted? Why or why not? Should employees be allowed to accept *pro bono* services outside of a legal expense fund? Why or why not?
2. Beneficiaries of and use of funds from legal expense funds. For example:
  - a. Should there be limits on the permissible beneficiaries? If so, what should those limits be and why?
  - b. Should there be limits on the number of eligible beneficiaries for a legal expense fund? Why or why not?
  - c. What limits, if any, should there be on permissible uses of donated funds?
3. Transparency of legal expense funds. For example:
  - a. Should the document establishing the legal expense fund be required to be publicly disclosed? Why or why not?
  - b. Should contributions be subject to reporting requirements? If so, should there be a threshold amount for disclosure? What type of information should be disclosed and what should the requirements for disclosure be? Why?
  - c. Should any disclosure information be made publicly available? If disclosure information is made publicly available, how and where should the information be disclosed?

4. Establishment, management, and termination of legal expense funds. For example:

- a. Should legal expense funds be the exclusive mechanism for employees to receive contributions toward legal assistance? Why or why not?
- b. What types of requirements should be imposed on legal expense fund trustees or managers, if any?
- c. Should there be any restrictions on the legal structure used to establish a legal expense fund (e.g., trust, limited liability company, etc.)? Why or why not?
- d. What entities, if any, should have oversight authority over legal expense funds? Why?
- e. Should there be limitations on solicitation of donations to a legal expense fund? If so, what limitations should be placed on solicitations and why?
- f. What, if any, requirements should there be concerning how legal expense funds can be terminated? Why?
- g. Should existing legal expense funds be required to conform to new regulations? Why or why not?

OGE invites input from all interested members of the public and encourages commenters to provide explanations and support for their answers or preferred policy positions.

#### Submit a Written Comment

To submit a written comment to OGE regarding this advance notice of proposed rulemaking, please email [usoge@oge.gov](mailto:usoge@oge.gov), send a fax to: (202) 482-9237, or submit a paper copy to: Office of Government Ethics, Suite 500, 1201 New York Avenue NW, Washington, DC 20005-3917. Individuals must include OGE's agency name and the words "Legal Expense Fund Regulation" in all written comments. All written comments, including attachments and other supporting materials, will become part of the public record and be subject to public disclosure. Written comments may be posted on OGE's website, [www.oge.gov](http://www.oge.gov). Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Written comments generally will not be edited to remove any identifying or contact information.

#### Virtual Public Hearing

In addition to accepting written comments, OGE will hold a virtual public hearing on May 22, 2019 from

1:00 p.m. to 4:00 p.m. EST. Individuals who would like to present comments at the public hearing must register by sending an email to [usoge@oge.gov](mailto:usoge@oge.gov). Registration will be accepted until May 17, 2019. The email should include "Legal Expense Fund Hearing" in the subject line and include the name of the presenter along with the general topic(s) the individual would like to address. OGE will make scheduling determinations on a first-come, first-served basis based on the time and date the email was received. Each participant will be limited to five minutes, and OGE will notify registrants of the time slot reserved for them. An individual may make only one presentation at the public hearing. OGE reserves the right to reject the registration of an entity or individual that is affiliated with an entity or individual that is already scheduled to present comments, and to select among registrants to ensure that a broad range of entities and individuals is allowed to present. Participation in the virtual public hearing does not preclude any entity or individual from submitting a written comment.

Registration is also required to listen to the the public hearing. Please email [usoge@oge.gov](mailto:usoge@oge.gov) to receive the call-in number. Registration will be accepted until May 17, 2019. The virtual public hearing also will be recorded and a transcript of the hearing will be posted on OGE's website, [www.oge.gov](http://www.oge.gov).

Approved: April 10, 2019.

#### Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2019-07390 Filed 4-12-19; 8:45 am]

BILLING CODE 6345-03-P

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 120

RIN 3245-AG97

#### Streamlining and Modernizing Certified Development Company Program (504 Loan Program) Corporate Governance Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to streamline and update the operational and organizational requirements for Certified Development Companies (CDCs) in order to improve efficiencies and reduce costs without unduly increasing risk in the 504 Loan Program. The proposed changes include streamlining the requirements that would apply to the corporate

governance of CDCs, and updating the requirements that would apply to professional services contracts entered into by CDCs, the requirements related to the audit and review of a CDC's financial statements, and the requirements related to the balance that a PCLP CDC must maintain in its Loan Loss Reserve Fund.

**DATES:** The U.S. Small Business Administration (SBA) must receive comments on this proposed rule on or before June 14, 2019.

**ADDRESSES:** You may submit comments, identified by RIN: 3245-AG97, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

- *Hand Delivery/Courier:* Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Linda Reilly, Chief, 504 Program Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW, Washington, DC 20416. 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; email: [linda.reilly@sba.gov](mailto:linda.reilly@sba.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The 504 Loan Program is an SBA financing program authorized under Title V of the Small Business Investment Act of 1958, 15 U.S.C. 695 *et seq.* The core mission of the 504 Loan Program is to provide long-term financing to small businesses for the purchase or improvement of land, buildings, and major equipment in an effort to facilitate the creation or retention of jobs and local economic development. Under the 504 Loan

Program, loans are made to small businesses 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 with: A loan obtained from a private sector lender with a senior lien covering at least 50 percent of the project cost (the Third Party Loan); a loan obtained from a CDC (the 504 Loan) with a junior lien covering up to 40 percent of the total cost (backed by a 100 percent SBA-guaranteed debenture sold in private pooling transactions); and a contribution from the Borrower of at least 10 percent equity.

## II. Proposed Changes to CDC Operational and Organizational Requirements

SBA is proposing to simplify, streamline, and update SBA's regulations relating to CDC operational and organizational requirements in order to improve efficiencies and achieve cost savings without compromising performance in the 504 Loan Program. To accomplish this goal, SBA proposes to amend the following sections in 13 CFR part 120:

### A. Section 120.818 Applicability to Existing For-Profit CDCs

Prior to 2014, 13 CFR 120.822 required CDCs to have a membership consisting of at least 25 members. This provision also provided that "no person or entity can own or control more than 10 percent of the CDC's voting membership (or stock)." When SBA removed the CDC membership requirement in 2014, the prohibition against any person or entity owning or controlling more than 10 percent of a for-profit CDC's voting stock was inadvertently eliminated. See 79 FR 15641 (March 21, 2014). SBA is proposing to reinstate this provision by adding it to § 120.818. The purpose of the 10 percent limit on stock ownership is to ensure that no one person or entity can control a for-profit CDC.

### B. Section 120.823 CDC Board of Directors

SBA proposes to amend § 120.823(a) by lowering the minimum number of directors required for the CDC's Board from nine (9) to seven (7). To satisfy SBA's quorum requirements set forth in § 120.823(c)(2), a Board with nine directors must have at least five directors present in order to hold a meeting. SBA is aware of the difficulty that some small and mid-sized CDCs have in satisfying the quorum