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Small Business Administration 504/CDC Loan Guaranty Program

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Summary

The Small Business Administration (SBA) administers programs to support small businesses, including several loan guaranty programs designed to encourage lenders to provide loans to small businesses "that might not otherwise obtain financing on reasonable terms and conditions." The SBA's 504 Certified Development Company (504/CDC) loan guaranty program is administered through nonprofit Certified Development Companies (CDCs). It provides long-term fixed rate financing for major fixed assets, such as land, buildings, equipment, and machinery. Of the total project costs, a third-party lender must provide at least 50% of the financing, the CDC provides up to 40% of the financing through a 100% SBA-guaranteed debenture, and the applicant provides at least 10% of the financing. Its name is derived from Section 504 of the Small Business Investment Act of 1958 (P.L. 85-699, as amended), which provides the most recent authorization for the sale of 504/CDC debentures. In FY2018, the SBA approved 5,874 504/CDC loans amounting to nearly $4.8 billion.

Congressional interest in the SBA's 504/CDC program has increased in recent years because of concern that small businesses might be prevented from accessing sufficient capital to enable them to grow and create jobs. For example, during the 111th Congress, P.L. 111-240, the Small Business Jobs Act of 2010

- increased the 504/CDC program's loan guaranty limits from $1.5 million to $5 million for "regular" borrowers, from $2 million to $5 million if the loan proceeds are directed toward one or more specified public policy goals, and from $4 million to $5.5 million for manufacturers;
- temporarily expanded, for two years, the types of projects eligible for 504/CDC program refinancing of existing debt;
- created an alternative 504/CDC size standard to increase the number of businesses eligible for assistance; and
- provided $505 million (plus an additional $5 million for administrative expenses) to extend temporary fee subsidies for the 504/CDC and 7(a) loan guaranty programs and a temporary increase in the 7(a) program's maximum loan guaranty percentage to 90%.

The temporary fee subsidies and 90% loan guaranty percentage ended on January 3, 2011, and the temporary expansion of the projects eligible for 504/CDC program refinancing of existing debt expired on September 27, 2012.

During the 114th Congress, P.L. 114-113, the Consolidated Appropriations Act, 2016, reinstated the expansion of the types of projects eligible for refinancing under the 504/CDC loan guaranty program in any fiscal year in which the refinancing program and the 504/CDC program as a whole do not have credit subsidy costs. The act requires each CDC to limit its refinancing so that, during any fiscal year, the new refinancings do not exceed 50% of the dollars it loaned under the 504/CDC program during the previous fiscal year.

This report examines the rationale provided for the 504/CDC program, its borrower and lender eligibility standards, operating requirements, and performance statistics, including loan volume, loss rates, proceeds usage, borrower satisfaction, and borrower demographics.

This report also examines congressional action taken to help small businesses gain greater access to capital, including enactment of P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA); P.L. 111-240; and P.L. 114-113, and issues related to the SBA's oversight of 504/CDC lenders.

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Small Business Administration Loan Guaranty Programs

The Small Business Administration (SBA) administers programs to support small businesses, including several loan guaranty programs designed to encourage lenders to provide loans to small businesses "that might not otherwise obtain financing on reasonable terms and conditions."[1] The SBA's 504 Certified Development Company (504/CDC) loan guaranty program provides long-term fixed rate financing for major fixed assets, such as land, buildings, equipment, and machinery. Its name is derived from Section 504 of the Small Business Investment Act of 1958 (P.L. 85-699, as amended), which provides the most recent authorization in the act concerning the sale of 504/CDC debentures.[2] It is administered through nonprofit Certified Development Companies (CDCs).[3] Of the total project costs, a third-party lender must provide at least 50% of the financing, the CDC provides up to 40% of the financing backed by a 100% SBA-guaranteed debenture, and the applicant provides at least 10% of the financing.

The SBA's debenture is backed by the full faith and credit of the United States and is sold to underwriters that form debenture pools. Investors purchase interests in the debenture pools and receive certificates representing ownership of all or part of the pool. The SBA and CDCs use various agents to facilitate the sale and service of the certificates and the orderly flow of funds among the parties.[4] After a 504/CDC loan is approved and disbursed, accounting for the loan is set up at the Central Servicing Agent (CSA, currently PricewaterhouseCoopers Public Sector LLP), not the SBA. The SBA guarantees the timely payment of the debenture. If the small business is behind in its loan payments, the SBA pays the difference to the investor on every semiannual due date.

In FY2018, the SBA approved 5,874 504/CDC loans amounting to nearly $4.8 billion.[5] At the end of FY2017, there were 59,141 504/CDC loans with an unpaid principal balance of about $27.4 billion.[6]

Historically, one of the justifications presented for funding the SBA's loan guaranty programs has been that small businesses can be at a disadvantage, compared with other businesses, when trying to obtain access to sufficient capital and credit.[7] Congressional interest in small business access to

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[1] U.S. Small Business Administration (SBA), *Fiscal Year 2010 Congressional Budget Justification*, p. 30.

[2] The 504 Certified Development Company (504/CDC) program was preceded by a Section 501 state development company program (1958-1982), a Section 502 local development company program (1958-1995), and a Section 503/CDC program (1980-1986). The 504/CDC program started in 1986.

[3] Five for-profit CDCs that participated in predecessor programs have been grandfathered into the current 504/CDC program. See SBA, "504 and 7(a) Loan Programs Updates," 79 *Federal Register* 15642, March 21, 2014.

[4] 13 C.F.R. §120.801. The SBA sells 10-year, 20-year, and 25-year 504/CDC debentures. The 10-year 504/CDC debentures are normally sold and proceeds disbursed every other month. The 20-year 504/CDC debentures are normally sold and proceeds disbursed on the Wednesday after the second Sunday of each month. The SBA made 25-year 504/CDC debentures available for 504/CDC projects approved on or after April 2, 2018. The 25-year 504/CDC debentures are expected to be sold and proceeds disbursed on a monthly basis. See SBA, "504 Loans and Debentures With 25 Year Maturity," 83 *Federal Register* 14536, April 4, 2018.

[5] SBA, "SBA Lending Statistics for Major Programs (as of September 30, 2018)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/WebsiteReport_asof_20180930.pdf.

[6] SBA, Office of Congressional and Legislative Affairs, correspondence with the author, November 24, 2017.

[7] U.S. Government Accountability Office (GAO), *Small Business Administration: 7(a) Loan Program Needs Additional Performance Measures*, GAO-08-226T, November 1, 2007, pp. 3, 9-11, at http://www.gao.gov/new.items/d08226t.pdf; and Veronique de Rugy, *Why the Small Business Administration's Loan Programs Should Be Abolished*,

capital, in general, and the 504/CDC program, in particular, has increased in recent years because of concern that small businesses might be prevented from accessing sufficient capital to enable them to grow and create jobs.

Congress authorized several changes to the 504/CDC program during the 111th Congress in an effort to increase the number and amount of 504/CDC loans. For example

- P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), provided $375 million to temporarily reduce fees in the SBA's 7(a) and 504/CDC loan guaranty programs ($299 million) and to temporarily increase the 7(a) program's maximum loan guaranty percentage to 90% ($76 million).[8] Congress subsequently appropriated another $265 million and authorized the SBA to reprogram another $40 million to extend those subsidies and the loan modification through May 31, 2010. ARRA also authorized the SBA to allow, under specified circumstances, the use of 504/CDC program funds to refinance existing debt for business expansion.[9]
- P.L. 111-240, the Small Business Jobs Act of 2010, increased the 504/CDC program's loan guaranty limits from $1.5 million to $5 million for "regular" borrowers, from $2 million to $5 million if the loan proceeds are directed toward one or more specified public policy goals, and from $4 million to $5.5 million for manufacturers. The act also temporarily expanded for two years after the date of enactment (or until September 27, 2012) the types of projects eligible for refinancing of existing debt under the 504/CDC program; provided $505 million (plus an additional $5 million for administrative expenses) to continue fee subsidies for the 7(a) loan guaranty program and the 504/CDC program through December 31, 2010; and established an alternative size standard that allows more companies to qualify for 504/CDC assistance.
- P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to continue the fee subsidies and the 7(a) program's 90% maximum loan guaranty percentage through March 4, 2011, or until funding provided for these purposes in P.L. 111-240 was exhausted (which occurred on January 3, 2011).

During the 114th Congress, P.L. 114-113, the Consolidated Appropriations Act, 2016, reinstated the expansion of the types of projects eligible for refinancing under the 504/CDC loan guaranty program in any fiscal year in which the refinancing program and the 504/CDC program as a

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American Enterprise Institute for Public Policy Research, AEI Working Paper #126, April 13, 2006, at http://www.aei.org/docLib/20060414_wp126.pdf. Proponents of federal funding for the SBA's loan guarantee programs also argue that small business can promote competitive markets. See P.L. 83-163, §2(a), as amended; and 15 U.S.C. §631a.

[8] SBA, "Recovery Act Agency Plan," May 15, 2009, at https://www.sba.gov/sites/default/files/sba_recovery_act_plan.pdf.

[9] The specified circumstances include the following: the amount of existing indebtedness does not exceed 50% of the project cost of the expansion; the proceeds of the indebtedness were used to acquire land, including the building situated thereon, to construct a building thereon, or to purchase equipment; the existing indebtedness is collateralized by fixed assets; the existing indebtedness was incurred for the benefit of a small business; the financing is used only for refinancing existing indebtedness or costs related to the project being financed; the refinancing provides a substantial benefit to the borrower; the borrower has been current on all payments due on the existing debt for not less than one year preceding the date of refinancing; and the financing provided will have better terms or rate of interest than the existing indebtedness. See P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), Section 504. Stimulus for Community Development Lending.

whole do not have credit subsidy costs. The act requires each CDC to limit its refinancing so that, during any fiscal year, the new refinancings do not exceed 50% of the dollars it loaned under the 504/CDC program during the previous fiscal year.[10] This limitation may be waived if the SBA determines that the refinance loan is needed for good cause. An interim final rule implementing the new refinancing program was issued by the SBA on May 25, 2016, effective June 24, 2016.[11]

This report opens with a discussion of the rationale for the 504/CDC program and then examines the program's borrower and lender eligibility standards; program requirements; and program statistics, including loan volume, loss rates, proceeds usage, borrower satisfaction, and borrower demographics. Next, it surveys congressional action taken during recent Congresses to enhance small business access to capital, including ARRA, P.L. 111-240, and P.L. 114-113.

This report also discusses issues raised concerning the SBA's administration of the program, including the oversight of 504/CDC lenders.

Program Participants and Financing Contribution

As shown in **Table 1**, 504/CDC projects generally have three main participants: a third-party lender provides 50% or more of the financing; a CDC provides up to 40% of the financing through a 504/CDC debenture, which is 100% guaranteed by the SBA; and the borrower contributes at least 10% of the financing.

The CDC's contribution, and the amount of the SBA's 100% guaranteed debenture, generally cannot exceed 40% of the financing for standard 504/CDC loans. It cannot exceed 35% of the financing for new businesses (defined as "a business that is two years old or less at the time the loan is approved") or if the loan is for either a limited-market property (defined as "a property with a unique physical design, special construction materials, or a layout that restricts its utility to the use for which it is designed") or a special purpose property.[12] The SBA lists 27 limited and special purpose properties (e.g., dormitories, golf courses, hospitals, and bowling alleys).[13] The CDC's contribution cannot exceed 30% of the financing when the borrower is a new business *and* the loan is for either a limited-market property or a special purpose property.

[10] The act also eliminated an alternative job retention goal for the expanded refinancing program authorized by P.L. 111-240, the Small Business Jobs Act of 2010. It also increased the SBA's Small Business Investment Company program's family of funds limit (the amount of outstanding leverage allowed for two or more SBIC licenses under common control) to $350 million from $225 million and increased the 7(a) loan program's authorization limit to $26.5 billion for FY2016 from $23.5 billion for FY2015.

[11] SBA, "Debt Refinancing in 504 Loan Program," 81 *Federal Register* 33123-33126, May 25, 2016.

[12] A 504/CDC loan generally may not exceed 40% of total project costs, plus 100% of eligible administrative costs. For good cause shown, the SBA may authorize an increase in the percentage of project costs covered up to 50%. No more than 50% of eligible project costs can be from federal sources, whether received directly or indirectly through an intermediary. See 13 C.F.R. §120.930.

[13] The SBA considers the following to be limited or special purpose properties: amusement parks; bowling alleys; car wash properties; cemeteries; clubhouses; cold storage facilities in which more than 50% of total square footage is equipped for refrigeration; dormitories; farms, including dairy facilities; funeral homes with crematoriums; gas stations; golf courses; hospitals, surgery centers, urgent care centers, and other health medical facilities; hotels and motels; marinas; mines; museums; nursing homes, including assisted living facilities; oil wells; quarries, including gravel pits; railroads; sanitary landfills; service centers (e.g., oil and lube, brake, or transmission centers) with pits and in-ground lifts; sports arenas; swimming pools; tennis clubs; theaters; and wineries. SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, pp. 260, 261, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

Table 1. 504/CDC Loan Structures and Contribution Requirements

Participant	Standard Loan	New Business or Limited or Special Purpose Property Loan	Both New Business and Limited or Special Purpose Property Loan
Third-Party Lender	At least 50%	At least 50%	At least 50%
CDC/SBA	Maximum 40%	Maximum 35%	Maximum 30%
Borrower	At least 10%	At least 15%	At least 20%

Source: U.S. Small Business Administration, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 257, at https://www.sba.gov/document/sop-50-10-5-lender-development-company- loan-programs.

Borrowers must contribute at least 10% of the financing for standard 504/CDC loans and at least 15% of the financing if the borrower is a new business or if the loan is for a limited-market property or a special purpose property. They must contribute at least 20% of the financing if the borrower is a new business *and* the loan is for either a limited-market property or a special purpose property.

Borrower Eligibility Standards and Program Requirements

Borrower Eligibility Standards

To be eligible for a SBA business loan, a small business applicant must

- be located in the United States;
- be a for-profit operating business (except for loans to eligible passive companies);
- qualify as small;[14]
- demonstrate a need for the desired credit and that the funds are not available from alternative sources, including personal resources of the principals; and
- be certified by a lender that the desired credit is unavailable to the applicant on reasonable terms and conditions from nonfederal sources without SBA assistance.[15]

Several types of businesses are prohibited from participating in the program. For example, financial businesses primarily engaged in the business of lending, such as banks and finance

[14] P.L. 111-240, the Small Business Jobs Act of 2010, required the SBA to establish an alternative size standard for the 504/CDC and 7(a) loan programs that uses maximum tangible net worth and average net income as an alternative to the use of industry standards. At the time of passage, the 7(a) program used industry-specific size standards and the 504/CDC program used maximum net worth of $8.5 million and maximum average net income of $3 million to determine program eligibility. The act establishes the following alternative size standard for both the 504/CDC and 7(a) programs on an interim basis: the business qualifies as small if it does not have a tangible net worth in excess of $15 million and does not have an average net income after federal taxes (excluding any carry-over losses) in excess of $5 million for two full fiscal years before the date of application. For further analysis concerning SBA size standards, see CRS Report R40860, *Small Business Size Standards: A Historical Analysis of Contemporary Issues*, by Robert Jay Dilger.

[15] 13 C.F.R. §120.100; and 13 C.F.R. §120.101.

companies; life insurance companies; businesses located in a foreign country; businesses deriving more than one-third of their gross annual revenue from legal gambling activities; businesses that present live performances of a prurient sexual nature; and businesses with an associate who is incarcerated, on probation, on parole, or has been indicted for a felony or a crime of moral turpitude are ineligible.[16]

To qualify for a SBA business loan, applicants must be creditworthy and able to reasonably assure repayment. The SBA requires lenders to consider the applicant's

- character, reputation, and credit history;
- experience and depth of management;
- strength of the business;
- past earnings, projected cash flow, and future prospects;
- ability to repay the loan with earnings from the business;
- sufficient invested equity to operate on a sound financial basis;
- potential for long-term success;
- nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and
- affiliates' effect on the applicant's repayment ability.[17]

Borrower Program Requirements

Use of Proceeds

A 504/CDC loan can be used to

- purchase land and make necessary improvements to the land, such as adding streets, curbs, gutters, parking lots, utilities, and landscaping;
- purchase buildings and make improvements to the buildings, such as altering the building's facade and updating its heating and electrical systems, plumbing, and roofing;
- purchase, transport, dismantle, or install machinery and equipment, provided the machinery and equipment have a useful life of at least 10 years;
- purchase essential furniture and fixtures;
- pay professional fees that are directly attributable and essential to the project, such as title insurance, title searches and abstract costs, surveys, and zoning matters;
- finance short-term debt (*bridge financing*) for eligible expenses that are directly attributable to the project and the financing term is three years or less;

[16] 13 C.F.R. §120.110. Nineteen types of businesses are ineligible for 504/CDC loans. In addition, an associate is an officer, director, owner of more than 20% of the equity, or key employee of the small business; any entity in which one or more individuals referred to above owns or controls at least 20% of the equity; and any individual or entity in control of or controlled by the small business, except a Small Business Investment Company licensed by the SBA. See 13 C.F.R. §120.10.

[17] 13 C.F.R. §120.150.

- pay interim financing costs, including points, fees, and interest;
- create a contingency fund, provided the fund does not exceed 10% of the project's construction costs; and
- finance permissible debt refinancing related to business expansion.[18]

A 504/CDC loan cannot be used for working capital or inventory.

Job Creation and Retention Requirement

All 504/CDC borrowers must meet at least one of two specified economic development objectives. First, borrowers, other than small manufacturers, must create or retain at least one job for every $75,000 of project debenture within two years of project completion.[19] Borrowers who are small manufacturers (defined as a small business with its primary North American Industry Classification System Code in Sectors 31, 32, and 33 and all of its production facilities located in the United States) must create or retain at least one job per $120,000 of project debenture within two years of project completion.[20]

Borrowers enter the number of jobs to be created or retained as a result of the project in their application for funds and the CDC verifies that the project meets the job creation or retention requirements. The jobs created do not have to be at the project facility, but 75% of the jobs must be created in the community in which the project is located. Using job retention to satisfy this requirement is allowed only if the CDC "can reasonably show that jobs would be lost to the community if the project was not done."[21]

If the borrower does not meet the job creation or retention requirement, the borrower can retain eligibility by meeting any 1 of 5 community development goals or 10 public policy goals, provided the CDC's overall portfolio of outstanding debentures meet or exceed the job creation or retention criteria of at least 1 job opportunity created or retained for every $75,000 in project debenture (or for every $85,000 in project debenture for projects located in special geographic areas such as Alaska, Hawaii, state-designated enterprise zones, empowerment zones, enterprise

[18] See SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, pp. 303, 304, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs. Expansion "includes any project that involves the acquisition, construction or improvement of land, building or equipment for use by the small business applicant." See ibid., p. 303.

[19] SBA, "Development Company Loan Program - Job Creation and Retention Requirements; Additional Areas for Higher Portfolio Average," 83 *Federal Register* 55225, November 2, 2018. Previously, P.L. 108-447, the Small Business Reauthorization and Manufacturing Assistance Act of 2004, had required borrowers, other than small manufactures, to create or retain at last one job for every $50,000 guaranteed by the Administration. P.L. 111-5, the American Recovery and Reinvestment Act of 2009, increased that amount to every $65,000 guaranteed by the Administration.

[20] Ibid. Previously, P.L. 108-447, the Small Business Reauthorization and Manufacturing Assistance Act of 2004, had had required small manufactures to create or retain at last one job for every $100,000 guaranteed by the Administration.

[21] See SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 297, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs. The SBA reports that CDCs supported 66,744 jobs in FY2014, 61,454 jobs in FY2015, 61,983 jobs in FY2016, 59,350 jobs in FY2017, and 56,395 jobs in FY2018. See SBA, *FY2019 Congressional Budget Justification and FY2017 Annual Performance Report*, p. 33, at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_FY_2019_CBJ_APR_2_12_post.pdf; and SBA, "SBA 7(a) & 504 Loan Data Reports: 1991 - Present SBA 504 Loan Data," at https://www.sba.gov/about-sba/sba-performance/open-government/foia/frequently-requested-records/sba-7a-504-loan-data-reports.

communities, labor surplus areas, or opportunity zones).[22] Loans to small manufacturers are excluded from the calculation of this average.[23]

The five community development goals are

- improving, diversifying, or stabilizing the economy of the locality;
- stimulating other business development;
- bringing new income into the community;
- assisting manufacturing firms; or
- assisting businesses in labor surplus areas as defined by the U.S. Department of Labor.

The 10 public policy goals are

- revitalizing a business district of a community with a written revitalization or redevelopment plan;
- increasing exports;
- expanding small businesses owned and controlled by women;
- expanding small businesses owned and controlled by veterans (especially service-disabled veterans);
- expanding minority enterprise development;
- aiding rural development;
- increasing productivity and competitiveness (e.g., retooling, robotics, modernization, and competition with imports);
- modernizing or upgrading facilities to meet health, safety, and environmental requirements;
- assisting businesses in or moving to areas affected by federal budget reductions, including base closings, either because of the loss of federal contracts or the reduction in revenues in the area due to a decreased federal presence; or
- reducing unemployment rates in labor surplus areas, as defined by the U.S. Department of Labor.[24]

If the project cannot meet any of these guidelines, then the debenture amount must be reduced to meet the job creation or retention requirement.[25]

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[22] SBA, "Development Company Loan Program - Job Creation and Retention Requirements; Additional Areas for Higher Portfolio Average," 83 *Federal Register* 55225-55226, November 2, 2018. Previously, P.L. 108-447, the Small Business Reauthorization and Manufacturing Assistance Act of 2004, had set these thresholds as: at least one job opportunity per every $50,000 guaranteed by the Administration and per every $75,000 guaranteed by the Administration for small manufactures. P.L. 111-5, the American Recovery and Reinvestment Act of 2009, increased the $50,000 threshold to every $65,000 guaranteed by the Administration.

[23] A job opportunity is defined as a full-time (or equivalent) permanent, or contracted, job created within two years of receipt of 504/CDC funds or retained in the community because of a 504/CDC loan. See SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 256, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

[24] 13 C.F.R. §120.862.

[25] SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 298, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

Loan Amounts

The minimum 504/CDC debenture is $25,000. P.L. 111-240 increased the maximum gross debenture amount

- from $1.5 million to $5 million for regular 504/CDC loans;
- from $2 million to $5 million if the loan proceeds are directed toward one or more of the public policy goals described above;
- from $4 million to $5.5 million for small manufacturers;
- from $4 million to $5.5 million for projects that reduce the borrower's energy consumption by at least 10%; and
- from $4 million to $5.5 million for projects for plant, equipment, and process upgrades of renewable energy sources, such as the small-scale production of energy for individual buildings or communities consumption (commonly known as micropower), or renewable fuel producers, including biodiesel and ethanol producers.[26]

Loan Terms, Interest Rate, and Collateral

Loan Terms

The SBA determines the 504/CDC program's loan terms and publishes them in the *Federal Register*.[27] The current maturity for a 504/CDC loan is generally

- 20 or 25 years for real estate;
- 10 years for machinery and equipment; and
- 10, 20, or 25 years based upon a weighted average of the useful life of the assets being financed.[28]

The maturities for the first mortgage issued by the third-party lender must be at least 7 years when the CDC/504 loan is for a term of 10 years and at least 10 years when the loan is for 20 or 25 years.[29]

Interest Rate

The interest rate for 504/CDC debentures is set by the SBA and approved by the Secretary of the Treasury.[30] It is based on market conditions for long-term government debt at the time of sale and pegged to an increment above the current market rate for 5-year and 10-year U.S. Treasury issues. The interest rate for 20-year 504/CDC debentures in November 2018 is 5.49%.[31] In addition, the

[26] P.L. 111-240, §1112. Maximum Loan Amounts Under 504 Program.

[27] 13 C.F.R. §120.933.

[28] SBA, "504 Loans and Debentures With 25 Year Maturity," 83 *Federal Register* 14536, April 4, 2018.

[29] 13 C.F.R. §120.921; and SBA, "504 Loans and Debentures With 25 Year Maturity," 83 *Federal Register* 14536, April 4, 2018.

[30] 13 C.F.R. §120.932.

[31] Capital Certified Development Corporation, "504/CDC Program Interest Rates," Austin, TX, at https://www.capitalcdc.com/loan-programs/the-sba-504-program. The interest rate for 20-year 504/CDC debentures was 4.59% in March 2012, 4.01% in January 2013, 4.53% in June 2013, 5.45% in October 2013, 5.29% in April 2014, 4.82% in October 2014, 4.78% in December 2014, 4.55% in February 2015, 4.85% in June 2015, 4.8% in November

SBA sets the maximum interest rate that can be charged by any third-party lender for a commercial loan which funds any portion of the cost of a 504/CDC project. The rate "must be reasonable" and published in the *Federal Register*. The current maximum interest rate that a third-party lender is allowed to charge for a commercial loan that funds any portion of the cost of a 504/CDC project is 6% greater than the New York prime rate or the maximum interest rate permitted in that state, whichever is less.[32]

Collateral

The SBA usually takes a second lien position on the project property to secure the loan. The SBA's second lien position is considered adequate when the applicant meets all of the following criteria:

- strong, consistent cash flow that is sufficient to cover the debt;
- demonstrated, proven management;
- the business has been in operation for more than two years; and
- the proposed project is a logical extension of the applicant's current operations.[33]

If one or more of the above factors is not met, additional collateral or increased equity contributions may be required. All collateral must be insured against such hazards and risks as the SBA may require, with provisions for notice to the SBA and the CDC in the event of impending lapse of coverage.[34] However, for 504/CDC loans, the applicant's cash flow is the primary source of repayment, not the liquidation of collateral. Thus, "if the lender's financial analysis demonstrates that the small business applicant lacks reasonable assurance of repayment in a timely manner from the cash flow of the business, the loan request must be declined, regardless of the collateral available or outside sources of cash."[35]

CDC Eligibility Standards, Operating Requirements, and Program Requirements

CDC Eligibility Standards

CDCs apply to the SBA for certification to participate in the 504/CDC program. A CDC must be a nonprofit corporation,[36] and it must

- be in good standing in the state in which it is incorporated;

2015, 4.87% in January 2016, 4.32% in May 2016, 4.08% in October 2016, 4.59% in December 2016, 4.37% in September 2017, 4.51% in December 2017, and 4.92% in April 2018.

[32] 13 C.F.R. §120.921; and SBA, "Reporting and Recordkeeping Requirements Under OMB Review," 77 *Federal Register* 59447, September 27, 2012.

[33] See SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 310, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

[34] 13 C.F.R. §120.934.

[35] See SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 170, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

[36] Five for-profit CDCs that participated in predecessor programs have been grandfathered into the current 504/CDC program. See SBA, "504 and 7(a) Loan Programs Updates," 79 *Federal Register* 15642, March 21, 2014.

- be in compliance with all laws, including taxation requirements, in the state in which it is incorporated and any other state in which it conducts business;
- provide the SBA a copy of its IRS tax exempt status;
- indicate its area of operations, which is the state of the CDC's incorporation;[37] and
- have a board of directors that fulfills specified requirements, such as having at least nine voting members, requiring a quorum of at least 50% of its voting membership to transact business, and meets at least quarterly.[38]

If approved by the SBA, newly certified CDCs are on probation for two years. At the end of this time, the CDC must petition for either permanent CDC status or a single, one-year extension of probation. To be considered for permanent CDC status or an extension of probation, the CDC must have satisfactory performance as determined by the SBA in its discretion. Examples of the factors that may be considered in determining satisfactory performance include the CDC's risk rating, on-site review and examination assessments, historical performance measures (like default rate, purchase rate, and loss rate), loan volume to the extent that it impacts performance measures, and other performance-related measurements and information (such as contribution toward SBA's mission).[39]

In FY2018, 194 CDCs provided at least one 504/CDC loan.[40]

CDC Operating Requirements

The CDC's board of directors is allowed to establish a loan committee composed of members of the CDC who may or may not be on the CDC's board of directors. The loan committee reports to the board and must meet specified requirements, such as having at least two members with commercial lending experience satisfactory to the SBA, generally requiring all of its members to live or work in the area of operations of the state in which the 504/CDC project they are voting on is located, not allowing any CDC staff to serve on the loan committee, and requiring a quorum of at least five committee members authorized to vote to hold a meeting.[41] In addition, multistate

[37] A CDC can apply to be a multistate CDC "only if the State the CDC seeks to expand into is contiguous to the State of the CDC's incorporation and the CDC establishes a loan committee in that State meeting the requirements of [13] C.F.R. §120.823." See SBA, "504 and 7(a) Loan Programs Updates," 79 *Federal Register* 15651, March 21, 2014 (the multi-state CDC language is effective as of April 21, 2014).

[38] See SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, pp. 43-45, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs. The SBA issued a final rule, effective April 21, 2015, that changed the SBA's regulations concerning the CDC's board of directors (13 C.F.R. §120.823). For example, the CDC's board of directors are now required to have at least nine voting directors; at least one voting director who represents the economic, community, or workforce development fields; and at least two voting directors, other than the CDC manager, who represent the commercial lending field. See SBA, "504 and 7(a) Loan Programs Updates," 79 *Federal Register* 15641, 15644-15646, March 21, 2014.

[39] 13 C.F.R. §120.812.

[40] SBA, "SBA 7(a) & 504 Loan Data Reports: 1991 - Present SBA 504 Loan Data," at https://www.sba.gov/about-sba/sba-performance/open-government/foia/frequently-requested-records/sba-7a-504-loan-data-reports. In FY2017, 211 CDCs provided at least one 504/CDC loan. See SBA, *FY2019 Congressional Budget Justification and FY2017 Annual Performance Report*, p. 43, at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_FY_19_508-Final-FINAL.PDF.

[41] 13 C.F.R. §120.823; and SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 46, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs. The SBA issued a final rule, effective April 21, 2015, that changed the SBA's regulations concerning the CDC's board of directors and the structure and operations of CDC loan committees (13 C.F.R. §120.823). Under the new rule, loan

CDCs are required to have a separate loan committee "for each state into which the CDC expands."[42]

The SBA also has a number of requirements concerning CDC staff, such as requiring CDCs to "have qualified full-time professional staff to market, package, process, close and service loans" and "directly employ full-time professional management," typically including an executive director (or the equivalent) to manage daily operations.[43]

CDCs are also required to operate "in accordance with all SBA loan program requirements" and provide the SBA "current and accurate information about all certification and operational requirements."[44] CDCs with 504/CDC loan portfolio balances of $20 million or more are required to submit financial statements audited in accordance with generally accepted accounting principles (GAAP) by an independent certified public accountant (CPA). CDCs with 504/CDC loan portfolio balances of less than $20 million must, at a minimum, submit a review of their loan portfolio balances by an independent CPA or independent accountant in accordance with GAAP. The auditor's opinion must state that the financial statements are in conformity with GAAP.[45]

CDC Program Requirements

The Application Process

CDCs must analyze each application in a commercially reasonable manner, consistent with prudent lending standards. The CDC's analysis must include

- a financial analysis of the applicant's pro forma balance sheet. The pro forma balance sheet must reflect the loan proceeds, use of the loan proceeds, and any other adjustments such as required equity injection or standby debt;
- a financial analysis of repayment ability based on historical income statements, tax returns (if an existing business), and projections, including the reasonableness of the supporting assumptions;
- a ratio analysis of the financial statements including comments on any trends and a comparison with industry averages;
- a discussion of the owners' and managers' relevant experience in the type of business, as well as their personal credit histories;

committees are required to have at least two members (instead of one) with commercial lending experience satisfactory to the SBA. See SBA, "504 and 7(a) Loan Programs Updates," 79 *Federal Register* 15650, March 21, 2014.

[42] See SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 46, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

[43] A CDC "may petition the SBA to waive the requirement of the manager being employed directly only if: (i) The petitioning CDC will have full-time professional management that is employed by a non-profit entity that has the economic development of the CDC's Area of Operations as one of its principal activities. Such full-time management may also work on and operate the other entity's economic development programs, but must be available to small businesses interested in the 504 program and to 504 loan borrowers during regular business hours; or (ii) The petitioning CDC is rural and has insufficient loan volume to justify having management employed directly by the CDC. The rural CDC must contract with another CDC located (i.e., incorporated) in the same general area." See ibid., pp. 46, 47.

[44] Ibid., p. 50.

[45] Ibid., p. 51.

- an analysis of collateral adequacy, including an evaluation of the collateral and lien position offered as well as the liquidation value;
- a discussion of the applicant's credit experience, including a review of business credit reports and any experience the CDC may have with the applicant; and
- other relevant information (e.g., if the application involves a franchise and the success of the franchise).[46]

CDCs submit this information, using required SBA forms, to the Sacramento, CA, loan processing center.

Accredited Lender Program Status

In 1991, the SBA established the ALP on a pilot basis to provide CDCs that "have developed a good partnership with their SBA field office in promoting local economic development and have demonstrated a good track record in the submission of documentation needed for making and servicing of sound loans" an expedited process for approving loan applications and servicing actions.[47] P.L. 103-403, the Small Business Administration Reauthorization and Amendments Act of 1994, authorized the SBA to establish the ALP on a permanent basis.

CDCs may apply to the SBA for ALP status. Selection is based on several factors, including the CDC's experience as a CDC, the number of 504/CDC loans approved, the size of the CDC's portfolio, its record of compliance with SBA loan program requirements, and its record of cooperation with all SBA offices.[48] The SBA is able to process loan requests from ALP-CDCs more quickly than from regular CDCs because it relies on their credit analysis when making the decision to guarantee the debenture. About one-third of CDCs have ALP status (77 of 226) and they account for about 60% of all 504/CDC lending.[49]

Premier Certified Lenders Program Status

P.L. 103-403 also authorized the SBA's Premier Certified Lenders Program (PCLP) on a pilot basis through October 1, 1997. The program's authorization was later extended through October 1, 2002, and given permanent statutory authorization by P.L. 106-554, the Consolidated Appropriations Act, 2001 (§1: H.R. 5667, the Small Business Reauthorization Act of 2000).[50]

ALP-CDCs must apply to the SBA for PCLP status. CDCs provided PCLP status have increased authority to process, close, service, and liquidate 504/CDC loans. The loans are subject to the same terms and conditions as other 504/CDC loans, but the SBA delegates to the PCLP-CDC all loan approval decisions, except eligibility. Selection is based on several factors, including all of the factors used to assess ALP status plus evidence that the CDC is "in compliance with its Loan Loss Reserve Fund (LLRF) requirements [described below], has established a PCLP processing

[46] Ibid., p. 255.

[47] SBA, "Loans to State and Local Development Companies Accredited Lenders Program for Certified Development Companies," 60 *Federal Register* 20391, April 26, 1995.

[48] SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 73, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

[49] In FY2017, the SBA disbursed 5,220 504/CDC loans totaling $4.0 billion. Of this amount, 3,512 were ALP loans totaling $2.6 billion. See SBA, Office of Congressional and Legislative Affairs, "SBA FY2017 PCLP Annual Report to Congress," April 4, 2018.

[50] P.L. 105-135, the Small Business Reauthorization Act of 1997, extended the program's authorization to October 1, 2002.

goal of 50%, and has a demonstrated ability to process, close, service and liquidate 504 and/or PCLP loans."[51]

PCLP-CDCs are required to establish and maintain a LLRF for its financings under the program. The LLRF is used to reimburse the SBA for 10% of any loss sustained by the SBA resulting from a default in the payment of principal or interest on a PCLP debenture. Each LLRF must equal 1% of the original principal amount of each PCLP debenture.[52]

As of September 30, 2017, 15 CDCs had active PCLP status.[53] In recent years, the number and amount of 504/CDC loans made through the PCLP program have declined. In FY2009, 373 PCLP loans amounting to $185.4 million were disbursed. In FY2018, 28 PCLP loans amounting to $24.5 million were approved.[54]

Real Estate Appraisals

As part of its analysis of each application, CDCs are required to have an independent appraisal conducted of the real estate if the estimated value of the project property is greater than $250,000 (or $250,000 or less "if such appraisal is necessary for appropriate evaluation of creditworthiness").[55] The appraiser must have no appearance of a conflict of interest and be either state licensed or state certified. When the project property's estimated value is more than $1 million, the appraiser must be state certified.[56]

Pre-Closing Interim Disbursements

SBA-approved 504/CDC loans are not closed until after project-related construction is complete, which often takes one to two years. All loans must be disbursed within 48 months of approval.[57] Prior to the sale of a debenture and the SBA's funding of the 504/CDC loan, the borrower may obtain interim financing from a third-party lender, usually the same lender that provided the loan covering 50% of the total 504 project financing.[58] The proceeds from the debenture sale repay the interim lender for the amount of the 504/CDC project costs that it advanced on an interim basis.[59]

Closing

The CDC closes the loan in time to meet a specific debenture funding date. At the time of closing, the project must be complete (except funds put into a construction escrow account to complete a

[51] SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 74, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

[52] Ibid.

[53] SBA, Office of Congressional and Legislative Affairs, correspondence with the author, August 24, 2017. All PCLP-CDCs have ALP status as that is a requirement for being provided PCLP authority.

[54] SBA, "SBA 7(a) & 504 Loan Data Reports: 1991 - Present SBA 504 Loan Data," at https://www.sba.gov/about-sba/sba-performance/open-government/foia/frequently-requested-records/sba-7a-504-loan-data-reports.

[55] SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 194, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

[56] Ibid.

[57] Ibid., p. 223.

[58] GAO, *Small Business Administration: Actions Needed to Ensure Planned Improvements Address Key Requirements of the Development Company (504) Loan Program*, GAO-14-233, March 6, 2014, p. 5, at http://www.gao.gov/assets/670/661428.pdf.

[59] SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 259, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

minor portion of the project). The SBA's district counsel reviews the closing package and notifies the Central Servicing Agent (CSA, currently PricewaterhouseCoopers Public Sector LLP) and the CDC via email if the loan is approved for debenture funding. If the loan is approved, the CDC forwards specified documents needed for the debenture funding directly to the CSA using a transmittal letter or spreadsheet. As mentioned, because the 504/CDC program provides permanent or *take-out* financing, an interim lender (either the third-party lender or another lender) typically provides financing to cover the period between SBA approval of the project and the debenture sale. Proceeds from the debenture sale are used to repay the interim lender for the amount of the project costs that it advanced on an interim basis.[60]

Loan Guaranty and Servicing Fees

Borrowers are currently charged fees amounting to about 3.5% of the net debenture proceeds plus annual servicing and guaranty fees of about 1% of the unpaid debenture balance. Some of these fees are charged by the SBA to the CDC and others are charged by the CDC directly to the borrower.

SBA Fees

The SBA is authorized to charge CDCs five fees to help recoup the SBA's expenses: a guaranty fee, servicing fee, funding fee, development company fee, and participation fee.

Guaranty Fee

The SBA is authorized to charge CDCs a one-time, up-front guaranty fee of 0.5% of the debenture.[61] The SBA elected not to charge this fee in FY2009, FY2010, and FY2011, and in FY2016, FY2017, and FY2018. The SBA charged this fee in FY2012, FY2013, FY2014, and FY2015, and is charging this fee in FY2019.[62]

Servicing Fee

The SBA is authorized to charge CDCs an ongoing servicing fee paid monthly by the borrower and adjusted annually based on the date the loan was approved. By statute, the fee is the lesser of the amount necessary to cover the estimated cost of purchasing and guaranteeing debentures under the 504/CDC program or 0.9375% per annum of the unpaid principal balance of the loan.[63]

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[60] Ibid.

[61] 13 C.F.R. §120.971(d).

[62] SBA, "SBA Information Notice: 7(a) and 504 Fees Effective On October 1, 2011," September 30, 2011, at https://www.sba.gov/sites/default/files/5000-1223.pdf; SBA, "SBA Information Notice: 7(a) and 504 Fees Effective On October 1, 2012," September 28, 2012, at https://www.sba.gov/sites/default/files/lender_notices/5000-1253.pdf; SBA, "SBA Information Notice: 7(a) and 504 Fees Effective On October 1, 2013," September 24, 2013, at https://www.sba.gov/sites/default/files/5000-1288.pdf; SBA, "SBA Information Notice: 7(a) and 504 Fees Effective On October 1, 2014," September 18, 2014, at https://www.sba.gov/sites/default/files/lender_notices/5000-1318.pdf; SBA, "SBA Information Notice: 7(a) and 504 Fees Effective On October 1, 2015," September 28, 2015, at https://www.sba.gov/sites/default/files/lender_notices/5000-1352.pdf; SBA, "SBA Information Notice: 7(a) and 504 Fees Effective On October 1, 2016," September 16, 2016, at https://www.sba.gov/sites/default/files/lender_notices/5000-1389.fees_for_FY_2017.pdf; SBA, "SBA Information Notice: 7(a) and 504 Fees Effective On October 1, 2017," August 15, 2017, at https://www.sba.gov/sites/default/files/lender_notices/5000-1954.pdf; and SBA, "SBA Information Notice: 504 Fees Effective On October 1, 2018," August 14, 2018, at https://www.sba.gov/document/information-notice-5000-180011-504-fees-effective-october-1-2018.

[63] 15 U.S.C. §697(b)(7)(A)(i); and 13 C.F.R. §120.971(d). The SBA's monthly servicing fee was 0.749% per annum in

The SBA's servicing fee for FY2019 is 0.368% of the unpaid principal balance for regular 504/CDC loans and 0.395% for 504 refinancing loans.[64]

Funding Fee

The SBA charges CDCs a funding fee, not to exceed 0.25% of the debenture, to cover costs incurred by the trustee, fiscal agent, and transfer agent.[65]

Development Company Fee

For SBA loans approved after September 30, 1996, the SBA charges CDCs an annual development company fee of 0.125% of the debenture's outstanding principal balance. The fee must be paid from the servicing fees collected by the CDC and cannot be paid from any additional fees imposed on the borrower.[66]

Participation Fee

The SBA charges third-party lenders a one-time participation fee of 0.5% of the senior mortgage loan if in a senior lien position to the SBA and the loan was approved after September 30, 1996.[67] The fee may be paid by the third-party lender, CDC, or borrower.

CDC Fees

CDCs are allowed to charge borrowers a processing (or packaging) fee, closing fee, servicing fee, late fee, assumption fee, CSA fee, other agent fees, and underwriters' fee.

Processing (or Packaging) Fee

The CDC is allowed to charge borrowers a processing (or packaging) fee of up to 1.5% of the net debenture proceeds. Two-thirds of this fee is considered earned and may be collected by the CDC when the SBA issues an Authorization for the Debenture. The portion of the processing fee paid by the borrower may be reimbursed from the debenture proceeds.[68]

FY2011 and 0.389% in FY2010.

[64] SBA, "SBA Information Notice: 504 Fees Effective On October 1, 2018," August 14, 2018, at https://www.sba.gov/document/information-notice-5000-180011-504-fees-effective-october-1-2018. The SBA's annual servicing fee was 0.749% in FY2011, 0.9375% in FY2012, FY2013, FY2014, and FY2015, 0.914% for regular 504/CDC loans and 0.958% for 504/CDC refinancing loans in FY2016, 0.697% for regular 504/CDC loans and 0.731% for 504/CDC refinancing loans in FY2017, and 0.642% for regular 504/CDC loans and 0.682% for 504/CDC refinancing loans in FY2018.

[65] 13 C.F.R. §120.971(e).

[66] 13 C.F.R. §120.972.

[67] Ibid. When there are different liens on a property, the senior lien must be satisfied before junior liens in the event of a default.

[68] SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 343, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs; and 13 C.F.R. §120.971(a)(1).

Closing Fee

The CDC is also allowed to charge "a reasonable closing fee sufficient to reimburse it for the expenses of its in-house or outside legal counsel, and other miscellaneous closing costs."[69] Up to $2,500 in closing costs may be financed out of the debenture proceeds.[70]

Servicing Fee

CDCs can also charge an annual servicing fee of at least 0.625% per annum and no more than 2% per annum on the unpaid balance of the loan as determined at five-year anniversary intervals. A servicing fee greater than 1.5% for rural areas and 1% elsewhere requires the SBA's prior written approval, based on evidence of substantial need. The servicing fee may be paid only from loan payments received. The fees may be accrued without interest and collected from the CSA when the payments are made. CSAs are entities that receive and disburse funds among the various parties involved in 504/CDC financing under a master servicing agent agreement with the SBA.[71]

Late Fee and Assumption Fee

Loan payments received after the 15th of each month may be subject to a late payment fee of 5% of the late payment or $100, whichever is greater. Late fees will be collected by the CSA on behalf of the CDC. Also, with the SBA's written approval, CDCs may charge an assumption fee not to exceed 1% of the outstanding principal balance of the loan being assumed.[72]

Central Servicing Agent Fee

CSAs are allowed to charge an initiation fee on each loan and an ongoing monthly servicing fee under the terms of the master servicing agreement. The current ongoing CSA monthly servicing fee is 0.1% per annum of the loan amount.[73] Also, "agent fees and charges necessary to market and service debentures and certificates may be assessed to the borrower or the investor."[74] CDCs must review the agent's services and related fees "to determine if the fees are necessary and reasonable when there is an indication from a third party that an agent's fees might be excessive, or when an applicant complains about the fees charged by an agent."[75] In cases in which fees appear to be unreasonable, CDCs "should contact" the SBA and if a SBA investigation determines that the fee is excessive, the agent "must reduce the fee to an amount SBA deems reasonable, refund any sum in excess of that amount to the applicant, and refrain from charging or collecting from the applicant any funds in excess of the amount SBA deems reasonable."[76]

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[69] 13 C.F.R. §120.971(a)(2).

[70] SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 345, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs; and 13 C.F.R. §120.883(e).

[71] 13 C.F.R. §120.971(a)(3); and SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 345, at https://www.sba.gov/document/sop-50-10-5-lender-development-company-loan-programs.

[72] 13 C.F.R. §120.971(a)(4); 13 C.F.R. §120.971(a)(5); and SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 161, at https://www.sba.gov/document/sop-50-10-5-lender-development-company- loan-programs.

[73] SBA, "Servicing Loan Agreement," at https://www.sba.gov/sites/default/files/forms/SBA_Form_1506.pdf.

[74] 13 C.F.R. §120.971(c).

[75] SBA, "SOP 50 10 5(J): Lender and Development Company Loan Programs," effective January 1, 2018, p. 167, at https://www.sba.gov/document/sop-50-10-5-lender-development-company- loan-programs.

[76] Ibid.

Underwriters' Fee

Borrowers are also charged an up-front underwriters' fee of 0.4% for 20-year loans and 0.375% for 10-year loans. The underwriters' fee is paid by the borrower to the underwriter.[77] Underwriters are approved by the SBA to form debenture pools and arrange for the sale of certificates.

Fee Subsidies

As mentioned previously, the SBA was provided more than $1.1 billion in funding in 2009 and 2010 to subsidize the 504/CDC program's third-party participation fee and CDC processing fee, subsidize the SBA's 7(a) program's guaranty fee, and increase the 7(a) program's maximum loan guaranty percentage from up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000 to 90% for all standard 7(a) loans.[78] The last extension, P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to continue the fee subsidies and the 7(a) program's 90% maximum loan guaranty percentage through March 4, 2011, or until funding provided by the Small Business Jobs Act of 2010 for this purpose was exhausted (which occurred on January 3, 2011).[79]

The Obama Administration argued that additional funding for the SBA's loan guaranty programs, including the 504/CDC program's fee subsidies, improved the small business lending environment, increased both the number and amount of SBA guaranteed loans, and supported "the retention and creation of hundreds of thousands of jobs."[80] Critics contended that small business tax reduction, reform of financial credit market regulation, and federal fiscal restraint are better means to assist small business economic growth and job creation.[81]

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[77] Ibid., pp. 345, 346.

[78] P.L. 111-5, the ARRA, provided $375 million for fee subsidies and the 7(a) program's 90% guaranty for all standard 7(a) loans. ARRA's funding for these purposes was exhausted on November 23, 2009. P.L. 111-118, the Department of Defense Appropriations Act, 2010, enacted on December 19, 2009, provided $125 million to extend the fee subsidies and 90% guaranty through February 28, 2010. P.L. 111-144, the Temporary Extension Act of 2010, enacted on March 2, 2010, provided $60 million to extend the fee subsidies and 90% guaranty through March 28, 2010. P.L. 111-150, an act to extend the Small Business Loan Guarantee Program, enacted on March 26, 2010, authorized the use of $40 million in SBA-appropriated funds to extend the fee subsidies and 90% guaranty through April 30, 2010. P.L. 111-157, the Continuing Extension Act of 2010, enacted on April 15, 2010, provided $80 million to extend the fee subsides and 90% guaranty through May 31, 2010. P.L. 111-240, the Small Business Jobs Act of 2010, enacted on September 27, 2010, provided $505 million (plus $5 million for related administrative expenses) to extend the fee subsidies and 90% guaranty through December 31, 2010. P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to continue the fee subsidies and 90% guaranty through March 4, 2011, or until the funding provided by the Small Business Jobs Act of 2010 for these purposes was exhausted (which occurred on January 3, 2011).

[79] On January 3, 2011, the SBA announced it had formed a SBA Loan Queue for loan applicants should any funding with the enhancements become available from loan cancellations. Typically, 7% to 10% of previously approved SBA loans are later canceled by the borrower or lender and are not disbursed for a variety of reasons. See SBA, "Jobs Act Supported More Than $12 Billion in SBA Lending to Small Businesses in Just Three Months," January 3, 2011, at https://www.sba.gov/content/jobs-act-supported-more-12-billion-sba-lending-small-businesses-just-three-months.

[80] SBA, "Administration Announces New Small Business Commercial Real Estate and Working Capital Programs," February 5, 2010, at http://www.smallbusinessmajority.org/_docs/resources/SBA_FactSheet_CRE_refi_2510.pdf; and SBA, "SBA Recovery Lending Extended Through April 30," March 29, 2010, at https://www.sba.gov/content/sba-recovery-lending-extended-through-april-30.

[81] Susan Eckerly, "NFIB Responds to President's Small Business Lending Initiatives," Washington, DC, October 21, 2009, at http://www.nfib.com/newsroom/newsroom-item/cmsid/50080/; and NFIB, "Government Spending," Washington, DC, at http://www.nfib.com/issues-elections/issues-elections-item/cmsid/49051/.

Program Statistics

Loan Volume

Table 2 shows the number and amount of 504/CDC loans that the SBA approved in FY2005-FY2018 and the net number and amount of 504/CDC loans that borrowers actually received in FY2005-FY2017 after full cancellations are taken into account. Each year, 5% to 15% of SBA-approved 504/CDC loans are subsequently canceled for a variety of reasons, typically by the borrower (e.g., funds are no longer needed or there was a change in ownership).

As the data indicate, the number and amount of 504/CDC loans declined in FY2008 and FY2009. The most likely causes for the decline were decreased small business demand for capital during the recession; difficulties in secondary credit markets, especially from October 2008 to February 2009; and a tightening of small business credit lending standards.

The number and amount of 504/CDC loans increased during FY2010 and FY2011 and reached prerecession levels in FY2012. The SBA attributed the increase in FY2010 and FY2011 to the continuation of 504/CDC fee subsidies, which were in place through most of FY2010 and the first quarter of FY2011.[82]

The continuing economic recovery, which contributed to increased demand for small business loans generally, and the temporary two-year expansion of the types of projects eligible for 504/CDC program refinancing of existing commercial debt (through September 27, 2012) under P.L. 111-240, the Small Business Jobs Act of 2010, most likely also contributed to the program's increased loan volume in FY2011 and FY2012.[83] For example, the SBA approved 307 loans amounting to $255.3 million in 504/CDC refinancing under the temporary expansion in FY2011 and 2,424 loans amounting to $2.26 billion in 504/CDC refinancing under the temporary expansion in FY2012 (see **Table 3**).

As expected, given the expiration of the temporary refinancing expansion, 504/CDC loan volume declined in FY2013, FY2014, and FY2015. The program's loan volume increased somewhat in FY2016 and FY2017, and declined somewhat in FY2018.

[82] SBA, Press Office, "Recovery Loan Incentives Spurred Continued Rebound in SBA Lending in FY2010," October 4, 2010, at https://www.sba.gov/content/recovery-loan-incentives-spurred-continued-rebound-sba-lending-fy2010; and SBA, "Jobs Act Supported More Than $12 Billion in SBA Lending to Small Businesses in Just Three Months," January 3, 2011, at https://www.sba.gov/content/jobs-act-supported-more-12-billion-sba-lending-small-businesses-just-three-months.

[83] The expanded 504/CDC refinancing program became operational on February 17, 2011, began accepting loan applications on February 28, 2011, and ended on September 27, 2012. See SBA, "Temporary 504 Loan Refinancing for Eligible Small Business Assets Under the Jobs Act: Fact Sheet," at https://www.sba.gov/offices/headquarters/ocpl/resources/14355.

Table 2. Number and Amount of 504/CDC Loans, FY2005-FY2018

($ amounts in billions)

Fiscal Year	Number Approved	Number (after full cancellations)	Amount of the Debentures Approved	Amount of the Debentures (after full cancellations)
2005	9,194	7,672	$5.14	$3.37
2006	9,943	8,325	$5.86	$4.27
2007	10,669	8,941	$6.46	$4.77
2008	8,883	7,328	$5.42	$5.05
2009	6,608	5,480	$3.91	$3.78
2010	7,833	6,642	$4.51	$3.44
2011	7,983	7,287	$4.62	$3.59
2012	9,471	8,764	$4.51	$3.62
2013	7,708	7,204	$5.33	$3.98
2014	5,885	5,614	$4.29	$3.83
2015	5,787	5,669	$4.41	$3.43
2016	5,938	5,836	$4.74	$4.65
2017	6,218	6,091	$5.01	$4.91
2018	5,874	NA	$4.75	NA

Source: U.S. Small Business Administration, correspondence with the author, December 7, 2016, and November 24, 2017; and U.S. Small Business Administration, "SBA Lending Statistics for Major Programs (as of September 30, 2018)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/WebsiteReport_asof_20180930.pdf.

Table 3. Number and Amount of 504/CDC Refinance Loans, FY2011, FY2012, FY2016, and FY2017

($ amounts in millions)

Fiscal Year	Number Approved	Number (after full cancellations)	Amount of the Debentures Approved	Amount of the Debentures (after full cancellations)
2011	307	272	$255.3	$226.0
2012	2,424	2,133	$2,268.2	$2,018.1
2016	45	42	$41.4	$39.6
2017	266	257	$287.4	$271.0
Total	**3,042**	**2,704**	**$2,852.3**	**$2,554.7**

Source: U.S. Small Business Administration, correspondence with the author, November 24, 2017.

Appropriations for Subsidy Costs

The SBA's goal is to achieve a zero subsidy rate for its loan guaranty programs. A zero subsidy rate occurs when the SBA's loan guaranty programs generate sufficient revenue through fees and recoveries of collateral on purchased (defaulted) loans to not require appropriations to issue new

loan guarantees. As indicated in **Table 4**, fees and recoveries did not generate enough revenue to cover 7(a) loan losses from FY2010 through FY2013, and 504/CDC loan losses from FY2012 through FY2015. Appropriations were provided to address the shortfalls.

Table 4. Business Loan Credit Subsidies, 7(a) and 504/CDC Loan Guaranty Programs, FY2005-FY2019

($ amounts in millions)

FY	7(a)	504/CDC	Total Subsidy
2005	$0.0	$0.0	$0.0
2006	$0.0	$0.0	$0.0
2007	$0.0	$0.0	$0.0
2008	$0.0	$0.0	$0.0
2009	$0.0	$0.0	$0.0
2010	$80.0	$0.0	$80.0
2011	$80.0	$0.0	$80.0
2012	$139.4	$67.7	$207.1
2013	$213.8	$102.5	$316.3
2014	$0.0	$107.0	$107.0
2015	$0.0	$45.0	$45.0
2016	$0.0	$0.0	$0.0
2017	$0.0	$0.0	$0.0
2018	$0.0	$0.0	$0.0
2019	$0.0	$0.0	$0.0

Source: P.L. 108-447, Consolidated Appropriations Act, 2005; P.L. 109-108, the Science, State, Justice, Commerce and Related Agencies Appropriations Act, 2006; U.S. Small Business Administration, *Congressional Budget Justification: FY2008 Annual Performance Report*, p. 17; U.S. Small Business Administration, *FY2010 Congressional Budget Justification and FY2008 Annual Performance Report*, p. 11; U.S. Small Business Administration, *FY2011 Congressional Budget Justification and FY2009 Annual Performance Report*, p. 19; U.S. Small Business Administration, *FY2012 Congressional Budget Justification and FY2010 Annual Performance Report*, p. 22; U.S. Small Business Administration, *FY2013 Congressional Budget Justification and FY2011 Annual Performance Report*, p. 19; U.S. Small Business Administration, *FY2014 Congressional Budget Justification and FY2012 Annual Performance Report*, p. 25; U.S. Small Business Administration, *FY2015 Congressional Budget Justification and FY2013 Annual Performance Report*, p. 24; P.L. 113-235, the Consolidation and Further Continuing Appropriations Act, 2015; P.L. 114-113, the Consolidated Appropriations Act, 2016, P.L. 114-223, the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017; P.L. 114-254, the Further Continuing and Security Assistance Appropriations Act, 2017; P.L. 115-31, the Consolidated Appropriations Act, 2017; and P.L. 115-141, the Consolidated Appropriations Act, 2018.

Notes: The Microloan program also receives a credit subsidy, primarily for providing below market interest rates to Microloan intermediaries. The subsidies were $1.45 million in FY2005, $1.3 million in FY2006 and FY2007, $2.0 million in FY2008, $8.5 million in FY2009 ($6 million added by P.L. 111-5, the American Recovery and Reinvestment Act of 2009), $3.0 million in FY2010 and FY2011, $3.678 million in FY2012, $3.498 million (after sequestration) in FY2013, $4.6 million in FY2014, $2.5 million in FY2015, $3.3 million in FY2016, $4.3 million in FY2017, and $3.44 million in FY2018.

Use of Proceeds and Borrower Satisfaction

In FY2016, borrowers used 504/CDC loan proceeds to

- purchase land and existing building (51.56%),
- building (construction, remodeling, improvements, etc.) (21.10%),
- machinery and equipment (purchase, installation, etc.) (7.09%),
- make renovations to a building (4.90%),
- purchase land (5.18%),
- other expenses (eligible contingency expenses, interim interest, etc.) (2.84%),
- purchase improvements (2.30%),
- debt to be refinanced (1.51%),
- professional fees (appraiser, architect, legal, etc.) (1.41%),
- add an addition to a building (1.04%),
- purchase or install fixtures (0.55%), or
- make leasehold improvements to a building (0.52%).[84]

In 2008, the Urban Institute surveyed 504/CDC borrowers and found that two-thirds of the respondents rated their overall satisfaction with their 504/CDC loan and loan terms as either excellent (21%) or good (45%). About one out of every four borrowers (23%) rated their overall satisfaction with their loan and loan terms as fair, 8% rated their overall satisfaction as poor, and 4% reported that they did not know or did not respond.[85] In addition, 87% of the survey's respondents reported that the 504/CDC loan was either very important (53%) or somewhat important (34%) to their business success (4% reported that it was somewhat unimportant, 4% reported very unimportant, and 6% reported that they did not know or did not respond).[86]

In March 2014, the Government Accountability Office (GAO) released a report examining the 504/CDC program. GAO reported that from FY2003 through March 31, 2013, the top four types of small businesses funded by 504/CDC loans were hotels (12%), restaurants (5%), doctor's offices (4%), and dentist's offices (3%). GAO also reported that 85% of approved 504/CDC loans and dollars went to existing small businesses and 15% went to new small businesses.[87]

Borrower Demographics

In 2008, the Urban Institute found that about 9.9% of private-sector small business loans were issued to minority-owned small businesses and about 16% of those loans were issued to women-owned businesses.[88] In FY2018, 28.7% of the total amount of 504/CDC approved loans went to minority-owned businesses (20.5% Asian, 6.6% Hispanic, 1.4% African American, and 0.1%

[84] SBA, Office of Congressional and Legislative Affairs, correspondence with the author, August 24, 2017.

[85] Christopher Hayes, *An Assessment of Small Business Administration Loan and Investment Performance: Survey of Assisted Businesses* (Washington, DC: The Urban Institute, 2008), p. 5, at http://www.urban.org/UploadedPDF/411599_assisted_business_survey.pdf. The percentage total exceeds 100 because recipients were allowed to name more than one use for the loan proceeds.

[86] Ibid.

[87] GAO, *Small Business Administration: Actions Needed to Ensure Planned Improvements Address Key Requirements of the Development Company (504) Loan Program*, GAO-14-233, March 6, 2014, p. 8, at http://www.gao.gov/assets/670/661428.pdf.

[88] Kenneth Temkin, Brett Theodos, with Kerstin Gentsch, *Competitive and Special Competitive Opportunity Gap Analysis of the 7(A) and 504 Programs* (Washington, DC: The Urban Institute, 2008), p. 13, at http://www.urban.org/UploadedPDF/411596_504_gap_analysis.pdf.

Native American) and 10.6% went to women-owned businesses.[89] Based on its comparative analysis of private-sector small business loans and the SBA's loan guaranty programs, the Urban Institute concluded that

> Overall, loans under the 7(a) and 504 programs were more likely to be made to minority-owned, women-owned, and start-up businesses (firms that have historically faced capital gaps) as compared to conventional small business loans. Moreover, the average amounts for loans made under the 7(a) and 504 programs to these types of firms were substantially greater than conventional small business loans to such firms. These findings suggest that the 7(a) and 504 programs are being used by lenders in a manner that is consistent with SBA's objective of making credit available to firms that face a capital opportunity gap.[90]

Congressional Issues

Fee Subsidies and the 7(a) Program's 90% Maximum Loan Guaranty Percentage

As mentioned previously, the SBA was provided more than $1.1 billion in funding in 2009 and 2010 to subsidize the 504/CDC program's third-party participation fee and CDC processing fee, subsidize the SBA's 7(a) program's guaranty fee, and increase the 7(a) program's maximum loan guaranty percentage from up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000 to 90% for all standard 7(a) loans.[91] The Obama Administration argued that this additional funding improved the small business lending environment, increased both the number and amount of SBA guaranteed loans, and supported "the retention and creation of hundreds of thousands of jobs."[92] Critics argued that small business tax reduction, reform of financial credit market regulation, and federal fiscal restraint are a better means to assist small business economic growth and job creation.[93]

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[89] SBA, "SBA Lending Statistics for Major Programs (as of September 30, 2018)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/WebsiteReport_asof_20180930.pdf.

[90] Kenneth Temkin, Brett Theodos, with Kerstin Gentsch, *Competitive and Special Competitive Opportunity Gap Analysis of the 7(A) and 504 Programs* (Washington, DC: The Urban Institute, 2008), p. 21, at http://www.urban.org/UploadedPDF/411596_504_gap_analysis.pdf.

[91] P.L. 111-5, the ARRA, provided $375 million for fee subsidies and the 7(a) program's 90% guaranty for all standard 7(a) loans. ARRA's funding for these purposes was exhausted on November 23, 2009. P.L. 111-118, the Department of Defense Appropriations Act, 2010, enacted on December 19, 2009, provided $125 million to extend the fee subsidies and 90% guaranty through February 28, 2010. P.L. 111-144, the Temporary Extension Act of 2010, enacted on March 2, 2010, provided $60 million to extend the fee subsidies and 90% guaranty through March 28, 2010. P.L. 111-150, an act to extend the Small Business Loan Guarantee Program, enacted on March 26, 2010, authorized the use of $40 million in SBA-appropriated funds to extend the fee subsidies and 90% guaranty through April 30, 2010. P.L. 111-157, the Continuing Extension Act of 2010, enacted on April 15, 2010, provided $80 million to extend the fee subsides and 90% guaranty through May 31, 2010. P.L. 111-240, the Small Business Jobs Act of 2010, enacted on September 27, 2010, provided $505 million (plus $5 million for related administrative expenses) to extend the fee subsidies and 90% guaranty through December 31, 2010. P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to continue the fee subsidies and 90% guaranty through March 4, 2011, or until the funding provided by the Small Business Jobs Act of 2010 for these purposes was exhausted (which occurred on January 3, 2011).

[92] SBA, "Administration Announces New Small Business Commercial Real Estate and Working Capital Programs," February 5, 2010, at http://www.smallbusinessmajority.org/_docs/resources/SBA_FactSheet_CRE_refi_2510.pdf; and SBA, "SBA Recovery Lending Extended Through April 30," March 29, 2010, at https://www.sba.gov/content/sba-recovery-lending-extended-through-april-30.

[93] Susan Eckerly, "NFIB Responds to President's Small Business Lending Initiatives," Washington, DC, October 21,

Program Administration

The SBA's Office of Inspector General (OIG) and the GAO have independently reviewed the administration of SBA's loan guaranty programs. Both agencies have reported deficiencies that they argued needed to be addressed, including issues involving the oversight of 504/CDC lenders.

On March 23, 2010, the SBA's OIG released the results of an audit of "25 of 100 statistically selected CDC/504 loans approved under Premier Certified Lender (PCL) authority that were disbursed during fiscal year (FY) 2008."[94] The loans "had been approved by 3 of the most active of the 24 PCLs" operating in 2008.[95]

The audit was initiated "based on concerns that PCLs were engaging in risky underwriting practices and that five PCLs were paying their executives excessive compensation."[96] The OIG determined that

> PCLs may not have used prudent practices in approving and disbursing 68% of the sampled loans, totaling nearly $8.9 million, due to poor loan underwriting, and eligibility or loan closing issues. Specifically, 40% of the loans had faulty underwriting repayment analyses, and 52% of the loans had eligibility and/or loan closing issues.... Projecting our sample results to the universe of CDC/504 loans disbursed in 2008 by these three PCLs, we estimate with 90% confidence that at least 572 loans, totaling nearly $254.9 million in CDC/504 loan proceeds, had weaknesses in the underwriting process, eligibility determinations or loan closing. Of this amount, we estimate that a minimum of 183 loans, totaling $56.4 million or more, were made to borrowers based on faulty repayment analyses. We also estimate that lenders disbursed $209 million or more to borrowers who had eligibility and/or loan closing issues.[97]

In terms of dollars paid for CDC executive compensation, the OIG found that

> 4 of the 5 CDCs reviewed were among the top 10 highest for executive compensation.... In terms of percentage of gross receipts spent on executive compensation, 3 of the 5 questioned CDCs ranked among the top 10 highest of the 56 CDCs that had gross receipts over $1 million.[98]

The OIG made several recommendations to address these issues, including changing the SBA's Standard Operating Procedures (SOP) to require lenders to use

> (1) the actual cash flow method to determine borrower repayment ability for businesses using accrual accounting, (2) historical salary levels to estimate salaries of the borrower's officers, and (3) historical sales data to make sales projections.[99]

It also recommended that the SBA develop a process "to ensure that corrective actions are taken in response to the Agency's onsite reviews to ensure these conditions do not continue, and/or

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2009, at http://www.nfib.com/newsroom/newsroom-item/cmsid/50080/; and NFIB, "Government Spending," Washington, DC, at http://www.nfib.com/issues-elections/issues-elections-item/cmsid/49051/.

[94] SBA, Office of the Inspector General, "Report on Audit of Premier Certified Lenders in the Section 504 Loan Program," March 23, 2010, p. 20, at https://www.sba.gov/content/10-10-audit-premier-certified-lenders-section-504-loan-program.

[95] Ibid.

[96] Ibid., p. 1.

[97] Ibid., pp. 3, 4.

[98] Ibid., p. 4.

[99] Ibid., pp. 4, 5.

guidance for these reviews should be modified, as appropriate, to ensure that reviewers properly assess lender determination of borrower repayment ability and eligibility."[100]

The OIG reported that the SBA

> disagreed that SOP 50 10 should be revised to strengthen lender repayment analyses by requiring the use of the actual cash flow method and historical salary and sales data. The Agency also did not believe an additional process was needed to ensure that corrective actions are taken to improve lender performance, but acknowledged that better use of onsite review results are needed to make more informed lender decisions and programmatic determinations.[101]

In 2009, GAO released an analysis of the SBA's oversight of the lending and risk management activities of lenders that extend 7(a) and 504/CDC loans to small businesses. GAO recommended that the SBA strengthen its oversight of these lenders and argued that although the SBA's "lender risk rating system has enabled the agency to conduct some off-site monitoring of lenders, the agency does not use the system to target lenders for on-site reviews or to inform the scope of the reviews."[102] GAO also noted that

> the SBA targets for review those lenders with the largest SBA-guaranteed loan portfolios. As a result of this approach, 97% of the lenders that SBA's risk rating system identified as high risk in 2008 were not reviewed. Further, GAO found that the scope of the on-site reviews that SBA performs is not informed by the lenders' risk ratings, and the reviews do not include an assessment of lenders' credit decisions.[103]

GAO argued that although the SBA "has made improvements to its off-site monitoring of lenders, the agency will not be able to substantially improve its lender oversight efforts unless it improves its on-site review process."[104]

As mentioned previously, in recent years, both the number and amount of 504/CDC loans made through the PCLP has declined. In FY2009, 373 PCLP loans amounting to $185.4 million were disbursed. In FY2017, nine PCLP loans amounting to $6.0 million were disbursed.[105]

In addition, the SBA's Office of Credit Risk Management (OCRM) created new metrics in 2015 for monitoring 504/CDC lender loan performance called SMART (measuring the lender's solvency and financial condition, management and governance, asset quality and servicing, regulatory compliance, and technical issues and mission) and updated those metrics in 2016.[106] SMART is designed to "assist OCRM in identifying high risk lenders and ensuring that lender oversight drives meaningful review activities, findings, and corrective actions that reduce risk to

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[100] Ibid., p. 5.

[101] Ibid.

[102] GAO, *Small Business Administration: Actions Needed to Improve the Usefulness of the Agency's Lender Risk Rating System*, GAO-1-53, November 6, 2009, p. i, at http://www.gao.gov/new.items/d1053.pdf.

[103] Ibid., pp. i, 27-30.

[104] Ibid., p. 35.

[105] SBA, Office of Congressional and Legislative Affairs, correspondence with the author, November 24, 2017.

[106] SBA, Office of Inspector General, "The SBA's Portfolio Risk Management Program Can be Strengthened," July 2, 2013, p. 19, at https://www.sba.gov/sites/default/files/oig/Audit%20Evaluation%20Report%2013-17%20The%20SBA's%20Portfolio%20Risk%20Management%20Program%20Can%20Be%20Strengthened.pdf; SBA, "SBA Information Notice 5000-1348: Revised Risk-Based Review Protocol for Certified Development Companies," October 3, 2017 (effective August 5, 2015), at https://www.sba.gov/sites/default/files/lender_notices/5000-1348.pdf; and SBA, "SBA Information Notice 5000-1398: Updated SMART Methodology for Oversight of CDCs," October 3, 2017 (effective November 9, 2016), at https://www.sba.gov/sites/default/files/lender_notices/SBA_Info_Notice_5000-1398_SM.pdf.

the SBA."[107] OCRM also created a "detailed bench-marking analysis project that will serve to establish quantitative performance metrics and indicators of quality (Preferred, Acceptable and Less than Acceptable) to be incorporated into each area of risk assessment identified in the ... SMART protocol measurement attributes."[108]

Legislative Activity During the 111th Congress

As mentioned previously, Congress approved legislation in 2009 (ARRA) that provided the SBA an additional $730 million, including $299 million to temporarily reduce fees in the SBA's 504/CDC loan guaranty and 7(a) programs and $76 million to temporarily increase the 7(a) program's loan guaranty from up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000.[109]

Congress approved legislation in 2010 (P.L. 111-240, the Small Business Jobs Act of 2010) that was designed to enhance small business access to capital. Among other provisions, the act

- provided $510 million to extend the 504/CDC and 7(a) loan guaranty programs' fee subsidies and the 7(a) program's 90% maximum loan guaranty percentage through December 31, 2010 (later extended to March 4, 2011) or until available funding was exhausted (which occurred on January 3, 2011);
- increased the 504/CDC program's loan limits from $1.5 million to $5 million for regular 504/CDC loans; from $2 million to $5 million if the loan proceeds are directed toward one or more of the program's specified public policy goals; from $4 million to $5.5 million for small manufacturers; from $4 million to $5.5 million for projects that reduce the borrower's energy consumption by at least 10%; and from $4 million to $5.5 million for projects for plant, equipment, and process upgrades of renewable energy sources, such as the small-scale production of energy for individual buildings or communities consumption (commonly known as micropower), or renewable fuel producers, including biodiesel and ethanol producers;
- temporarily expanded, for two years after enactment (through September 27, 2012), the types of projects eligible for 504/CDC program refinancing of existing commercial debt;[110] and

[107] SBA, Office of Inspector General, "The SBA's Portfolio Risk Management Program Can be Strengthened," July 2, 2013, p. 19, at https://www.sba.gov/sites/default/files/oig/Audit%20Evaluation%20Report%2013-17%20The%20SBA's%20Portfolio%20Risk%20Management%20Program%20Can%20Be%20Strengthened.pdf.

[108] Ibid.

[109] SBA, "Recovery Act Agency Plan," May 15, 2009, at https://www.sba.gov/sites/default/files/recovery_act_reports/sba_recovery_act_plan.pdf.

[110] The act temporarily allowed 504/CDC loans to be used to refinance projects not involving expansions as long as the financing did not exceed 90% of the value of the collateral for the financing, "except that, if the appraised value of the eligible fixed assets serving as collateral for the financing is less than the amount equal to 125% of the amount of the financing, the borrower may provide additional cash or other collateral to eliminate any deficiency." The refinancing could be used only for commercial indebtedness incurred not less than two years before the date of the application for assistance and only for eligible fixed assets (to acquire land, buildings, or equipment, or to construct a building). The refinancing could not be used for indebtedness subject to a federal guarantee, and it had to be collateralized by eligible fixed assets. The borrower also had to be current on all payments due on the existing debt for not less than one year before the date of the application. The act limited the amount of refinancing to $7.5 billion each fiscal year. The act also included an alternative job retention goal that allowed borrowers that do not meet the 504/CDC program's job creation and retention goals to participate in the expanded refinancing program, but limited that participation to "not

- authorized the SBA to establish an alternative size standard for the 7(a) and 504/CDC programs that uses maximum tangible net worth and average net income as an alternative to the use of industry standards and established an interim size standard of a maximum tangible net worth of not more than $15 million and an average net income after federal taxes (excluding any carryover losses) for the preceding two fiscal years of not more than $5 million.[111]

The Obama Administration argued that increasing maximum loan limit for SBA programs (including the 504/CDC program) would allow the SBA to "support larger projects," which would "allow the SBA to help America's small businesses drive long-term economic growth and the creation of jobs in communities across the country."[112] The Administration also argued that increasing the maximum loan limits for these programs will be "budget neutral" over the long run and "help improve the availability of smaller loans."[113]

Critics of increasing the SBA's maximum loan limits argued that doing so might increase the risk of defaults, resulting in higher guaranty fees or the need to provide the SBA additional funding.[114] Others advocated a more modest increase in the maximum loan limits to ensure that the 7(a) program "remains focused on startup and early-stage small firms, businesses that have historically encountered the greatest difficulties in accessing credit" and "avoids making small borrowers carry a disproportionate share of the risk associated with larger loans."[115]

Others contended that creating a small business direct lending program within the SBA would reduce paperwork requirements and be more efficient in providing small businesses access to capital than modifying existing SBA programs that rely on private lenders to determine if they will issue the loans.[116] Also, as mentioned previously, others argued that providing additional resources to the SBA or modifying the SBA's loan programs as a means to augment small businesses' access to capital is ill-advised. In their view, the SBA has limited impact on small businesses' access to capital. They argued that the best means to assist small business economic growth and job creation is to focus on small business tax reduction, reform of financial credit market regulation, and federal fiscal restraint.[117]

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more than the product obtained by multiplying the number of employees of the borrower by $65,000." See P.L. 111-240, §1122. Low-Interest Refinancing Under the Local Development Business Loan Program.

[111] At the time of passage, the 7(a) program used industry-specific size standards and the 504/CDC program used maximum net worth of $8.5 million and maximum average net income of $3 million to determine program eligibility.

[112] Ibid.

[113] Ibid.

[114] Robb Mandelbaum, "Small Business Incentives Face a Hard Road in Congress," *New York Times*, February 12, 2010, at http://boss.blogs.nytimes.com/2010/02/12/small-business-incentives-face-a-hard-road-in-congress/; and U.S. Congress, House Committee on Small Business, *House Committee on Small Business Views With Regard to the Fiscal Year (FY) 2010 Budget*, Letter from Nydia Velázquez, Chair, House Committee on Small Business, to John M. Spratt, Jr., Chair, House Committee on the Budget, 111th Cong., 2nd sess., March 11, 2009, p. 3, at http://www.house.gov/smbiz/democrats/Reports/FY%202010%20Views%20and%20Estimates%20v2.pdf.

[115] U.S. Congress, House Committee on Small Business, *Small Business Financing and Investment Act Of 2009*, report to accompany H.R. 3854, 111th Cong., 2nd sess., October 26, 2009, H.Rept. 111-315 (Washington: GPO, 2009), p. 1.

[116] Robb Mandelbaum, "Why Won't the S.B.A. Lend Directly to Small Businesses?" *New York Times*, March 10, 2010, at http://boss.blogs.nytimes.com/2010/03/10/why-wont-the-s-b-a-loan-directly-to-small-businesses/.

[117] Susan Eckerly, "NFIB Responds to President's Small Business Lending Initiatives," Washington, DC, October 21, 2009, at http://www.nfib.com/newsroom/newsroom-item/cmsid/50080/; and NFIB, "Government Spending," Washington, DC, at http://www.nfib.com/issues-elections/issues-elections-item/cmsid/49051/.

Legislative Activity During the 112th Congress

As mentioned previously, Congress did not approve any changes to the 504/CDC program during the 112th Congress. However, legislation was introduced during the 112th Congress to change the program, including several proposals to extend the now-expired two-year temporary expansion of the eligibility of 504/CDC refinancing projects not involving expansions.

Proponents of extending the 504/CDC refinancing expansion provision, initially enacted as part of P.L. 111-240, the Small Business Jobs Act of 2010, argued that it would create jobs by enabling small business owners to lower their monthly payments "at no cost to taxpayers" and "is one of many things that we should be doing to put more capital in the hands of America's job creators."[118]

Opponents worried that the provision may require funding to cover loan losses in the future, arguing that "commercial refinancing may pose an undue risk … at a time of significant budgetary constraints."[119] Others opposed the expansion of 504/CDC refinancing on economic or ideological grounds, arguing that federal fiscal restraint, business tax reduction, and business regulatory relief would provide greater assistance to small businesses than expanding an existing SBA spending program.

H.R. 2950, the Small Business Administration 504 Loan Refinancing Extension Act of 2011, was introduced on September 15, 2011, and referred to the House Committee on Small Business. The bill would have allowed 504/CDC loans to be used to refinance projects not involving expansions as long as the financing did not exceed 90% of the value of the collateral for the financing for an additional year beyond the two years from the date of enactment that was authorized by the Small Business Jobs Act of 2010.

S.Amdt. 1833, the INVEST in America Act of 2012—an amendment in the nature of a substitute for H.R. 3606, the Jumpstart Our Business Startups Act—was introduced on March 15, 2012. It would have allowed 504/CDC loans to be used to refinance projects not involving expansions for an additional year beyond the two years from the date of enactment authorized by the Small Business Jobs Act of 2010.[120] The amendment was ruled nongermane by the chair on March 21, 2012, and was not included in the final version of the bill that was approved by the Senate the following day.[121]

S. 3572, the Restoring Tax and Regulatory Certainty to Small Businesses Act of 2012, was introduced on September 19, 2012, and referred to the Senate Committee on Small Business and Entrepreneurship and the Senate Committee on Finance. It would have allowed 504/CDC loans to

[118] Sen. Mary Landrieu, "Statements on Introduced Bills and Joint Resolutions: S. 289, Commercial Real Estate and Economic Development Act of 2013," remarks in the Senate, *Congressional Record*, vol. 159, part 22 (February 12, 2013), p. S661. Note: the SBA approved 307 loans amounting to $257.7 million in 504/CDC refinancing under the temporary expansion in FY2011, and 2,424 loans amounting to $2.28 billion in 504/CDC refinancing under the temporary expansion in FY2012. As of March 14, 2013, one loan issued under this provision, in the amount of $869,000, had been purchased (was in default) and, as of that date, was in liquidation.

[119] Barry Pineless, Chief Counsel, House Committee on Small Business, "Letter to Members, House Committee on Small Business, Full Committee Hearing on The Budget Outlook for the Small Business Administration," April 18, 2013, pp. 12, 13, at http://smallbusiness.house.gov/uploadedfiles/revised_hearing_memo_4-24-2013.pdf.

[120] Sen. Harry Reid, "Consideration of H.R. 3606, the Jumpstart our Business Startups Act," Text of Amendments, *Congressional Record*, vol. 158, part 43 (March 15, 2012), p. S1754.

[121] H.R. 3606, the Jumpstart Our Business Startups Act, was passed by the House on March 8, 2012. The bill did not contain a provision concerning 504/CDC refinancing. President Obama signed the bill, as amended, into law on April 5, 2012 (P.L. 112-106, the Jumpstart Our Business Startups).

be used to refinance projects not involving expansions for an additional year and a half beyond the two years from the date of enactment authorized by the Small Business Jobs Act of 2010.

S. 1828, a bill to increase small business lending, and for other purposes, was introduced on November 8, 2011, and referred to the Senate Committee on Small Business and Entrepreneurship. The bill would have reinstated for a year following the date of its enactment the fee subsidies for the 504/CDC and 7(a) loan guaranty programs and the 90% loan guaranty percentage for the 7(a) program that were originally funded by ARRA.

Legislative Activity During the 113th Congress

Two bills were introduced during the 113th Congress to reinstate the temporary two-year expansion of projects eligible for 504/CDC program refinancing of existing debt, which expired on September 27, 2012. H.R. 1240, the Commercial Real Estate and Economic Development (CREED) Act of 2013, would have reinstated the temporary expansion of the projects eligible for 504/CDC program refinancing of existing debt for five years following the bill's enactment. It was referred to the House Committee on Small Business on March 18, 2013. Its companion bill in the Senate (S. 289) was referred to the Senate Committee on Small Business and Entrepreneurship on February 12, 2013, and was ordered to be reported favorably, with an amendment, on June 17, 2013. As amended, S. 289 would have reinstated the temporary expansion of the projects eligible for 504/CDC program refinancing of existing debt during any fiscal year in which the 504/CDC program is operating at zero subsidy.[122]

In addition, H.R. 4652, the Increasing Small Business Lending Act, would have authorized fee waivers for the 7(a) and 504/CDC programs.

Legislative Activity During the 114th Congress

As mentioned previously, P.L. 114-113, the Consolidated Appropriations Act, 2016, reinstated the expansion of the types of projects eligible for refinancing under the 504/CDC loan guaranty program in any fiscal year in which the refinancing program and the 504/CDC program as a whole do not have credit subsidy costs. The act requires each CDC to limit its refinancing so that, during any fiscal year, the new refinancings do not exceed 50% of the dollars it loaned under the 504/CDC program during the previous fiscal year. This limitation may be waived if the SBA determines that the refinance loan is needed for good cause. An interim final rule implementing the new refinancing program was issued by the SBA on May 25, 2016, effective June 24, 2016.[123]

The act also eliminated an alternative job retention goal provision that allowed borrowers that do not meet the 504/CDC program's job creation and retention goals to participate in the expanded refinancing program, but limited that participation to "not more than the product obtained by multiplying the number of employees of the borrower by $65,000."[124]

Previously, H.R. 2266, the Commercial Real Estate and Economic Development Act of 2015, would have reinstated the temporary expansion of projects eligible for 504/CDC program

[122] The Obama Administration recommended in its FY2014 and FY2015 congressional budget justification documents that the 504/CDC expansion of refinancing provision be extended for a year. See SBA, *FY2014 Congressional Budget Justification and FY2012 Annual Performance Report*, p. 37; and SBA, *FY2015 Congressional Budget Justification and FY2013 Annual Performance Report*, pp. 5, 37.

[123] SBA, "Debt Refinancing in 504 Loan Program," 81 *Federal Register* 33123-33126, May 25, 2016.

[124] P.L. 111-240, §1122. Low-Interest Refinancing Under the Local Development Business Loan Program.

refinancing of existing debt for five years following enactment. Its companion bill in the Senate (S. 966), as amended in committee, would have reinstated the temporary expansion of the refinancing program during any fiscal year in which the 504/CDC program is operating at zero subsidy. Also, the Obama Administration had requested in its FY2016 budget request authority to reinstate the 504/CDC refinancing program (without a business expansion requirement) in FY2016 to support up to $7.5 billion in lending.[125]

Legislative Activity During the 115th Congress

S. 347, the Investing in America's Small Manufacturers Act, would, among other provisions, allow CDCs to provide up to 50% of the loan instead of up to 40% if the borrower is a small manufacturer and the 504/CDC loan guarantee program's subsidy cost for that current fiscal year is not above zero.

Concluding Observations

During the 111th Congress, congressional debate concerning proposed changes to the SBA's loan guaranty programs, including the 504/CDC program, centered on the likely impact the changes would have on small business access to capital, job retention, and job creation. As a general proposition, some, including President Obama, argued that economic conditions made it imperative that the SBA be provided additional resources to assist small businesses in acquiring capital necessary to start, continue, or expand operations, and create jobs.[126] Others worried about the long-term adverse economic effects of spending programs that increase the federal deficit and advocated business tax reduction, reform of financial credit market regulation, and federal fiscal restraint as the best means to assist small business economic growth and job creation.[127]

In terms of specific program changes, continuing the 504/CDC program's temporary fee subsidies, increasing its loan limits, temporarily (and later permanently) expanding its refinancing options, and authorizing the SBA to establish an alternative size standard were designed to achieve the same goal: to enhance job creation and retention by increasing the ability of 504/CDC borrowers to obtain credit at affordable rates.[128]

Critics argued that these actions might increase the risk of defaults and result in higher guaranty fees or the need to provide the SBA additional funding to cover loan subsidy costs.[129] Others

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[125] SBA, *FY2016 Congressional Budget Justification and FY2014 Annual Performance Report*, p. 41.

[126] Rep. Nydia Velázquez, "Small Business Financing and Investment Act of 2009," House debate, *Congressional Record*, daily edition, vol. 155, no. 159 (October 29, 2009), pp. H12074, H12075; Sen. Mary Landrieu, "Statements on Introduced Bills and Joint Resolutions," remarks in the Senate, *Congressional Record*, daily edition, vol. 155, no. 185 (December 10, 2009), p. S12910; and The White House, "Remarks by the President on Job Creation and Economic Growth," December 8, 2009, at http://www.whitehouse.gov/the-press-office/remarks-president-job-creation-and-economic-growth.

[127] Susan Eckerly, "NFIB Responds to President's Small Business Lending Initiatives," Washington, DC, October 21, 2009, at http://www.nfib.com/newsroom/newsroom-item/cmsid/50080/; and NFIB, "Government Spending," Washington, DC, at http://www.nfib.com/issues-elections/issues-elections-item/cmsid/49051/.

[128] SBA, "Administration Announces New Small Business Commercial Real Estate and Working Capital Programs," February 5, 2010, at http://www.sba.gov/sites/default/files/sba_rcvry_factsheet_cre_refi.pdf.

[129] Robb Mandelbaum, "Small Business Incentives Face a Hard Road in Congress," *New York Times*, February 12, 2010, at http://boss.blogs.nytimes.com/2010/02/12/small-business-incentives-face-a-hard-road-in-congress/; and U.S. Congress, House Committee on Small Business, *House Committee on Small Business Views With Regard to the Fiscal Year (FY) 2010 Budget*, Letter from Nydia Velázquez, Chair, House Committee on Small Business, to John M. Spratt,

advocated a more modest increase in the maximum loan limits to ensure that the programs focus on start-ups and early-stage small firms, "businesses that have historically encountered the greatest difficulties in accessing credit," and that they avoid "making small borrowers carry a disproportionate share of the risk associated with larger loans."[130]

During the 112th, 113th, and 114th Congresses, congressional oversight focused on the SBA's administration of the program changes enacted during the 111th Congress, the impact of those changes on the SBA's lending, and ways to address and minimize increased costs associated with loan losses. Although there continues to be widespread congressional support for providing assistance to small businesses, federal fiscal constraints may impede efforts to further expand the 504/CDC program in the near future.

Given existing fiscal constraints, it is likely that congressional oversight during the 115th Congress will continue to focus on (1) the SBA's administration of the 504/CDC program to ensure that the program is as efficient as possible; and (2) the program's efficacy in job retention and creation.

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Jr., Chair, House Committee on the Budget, 111th Cong., 2nd sess., March 11, 2009, p. 3, at http://www.house.gov/smbiz/democrats/Reports/FY%202010%20Views%20and%20Estimates%20v2.pdf.

[130] U.S. Congress, House Committee on Small Business, *Small Business Financing and Investment Act of 2009*, report to accompany H.R. 3854, 111th Cong., 2nd sess., October 26, 2009, H.Rept. 111-315 (Washington: GPO, 2009), p. 1.