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COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options

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SUMMARY

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COVID-19 Relief Assistance to Small Businesses: Issues and Policy Options

The U.S. Small Business Administration (SBA) administers several types of programs to support small businesses, including direct disaster loan programs for businesses, homeowners, and renters; loan guaranty and venture capital programs; management and technical assistance training programs; and contracting programs.

Congressional interest in these programs has always been high, primarily because small businesses are viewed as a means to stimulate economic activity and create jobs, but it has become especially acute in the wake of the Coronavirus Disease 2019 (COVID-19) pandemic's widespread adverse economic impact on the national economy.

This report provides a brief description of the SBA's programs and examines congressional action to assist small businesses during and immediately following the Great Recession (2007-2009) and during the COVID-19 pandemic, including the following:

- P.L. 116-123, the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, provided the SBA an additional $20 million for SBA disaster assistance administrative expenses and made economic injury from the coronavirus an eligible expense for SBA's Economic Injury Disaster Loans (EIDL).
- P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), among other provisions, provided $349 billion to support SBA's Section 7(a) lending programs and create a new Paycheck Protection Program (PPP). PPP loans have a 100% SBA loan guarantee, a 10-year maximum term, and a not-to-exceed 4% interest rate to assist small businesses, small 501(c)(3) nonprofit organizations, and small 501(c)(19) veterans organizations that have been adversely affected by COVID-19. Loan deferment and forgiveness are provided under specified conditions. The loans were originally available through June 30, 2020, and had a two-year term at 1% interest.
- P.L. 116-139, the Paycheck Protection Program and Health Care Enhancement Act (Enhancement Act), among other provisions, appropriated an additional $321.335 billion for the PPP.
- P.L. 116-142, the Paycheck Protection Program Flexibility Act, among other provisions, extended the PPP loan forgiveness covered period from 8 weeks after the loan's origination date to the earlier of 24 weeks or December 31, 2020. PPP borrowers may elect to remain under the 8-week-covered period.
- P.L. 116-147, to extend the authority for commitments for the paycheck protection program, extended the PPP covered loan period from June 30, 2020, to August 8, 2020, and authorized $659 billion for PPP loan commitments and $30 billion for 7(a) loan commitments.
- H.R. 6800, the Heroes Act, and S. 4321, the Continuing Small Business Recovery and Paycheck Protection Program Act, would make numerous changes to the PPP program. Negotiations to reconcile these bills are currently underway.

Some of the CARES Act's provisions (e.g., fee waivers and increased loan limits) were used in legislation during the 111th Congress to assist small businesses during and immediately following the Great Recession. The main difference between that legislation and the CARES Act is that the CARES Act includes loan deferrals, loan forgiveness, and greatly expanded eligibility, including, for the first time, specified types of nonprofit organizations.

The PPP started on April 3, 2020. The SBA stopped accepting new PPP applications on April 15, 2020, because the SBA neared its $349 billion authorization limit for Section 7(a) lending, which includes the PPP. The SBA started accepting PPP loan applications once again on April 27, 2020, following the Enhancement Act's appropriating an additional $321.335 billion to support up to $659 billion in Section 7(a) lending. As required by the CARES Act, the SBA stopped accepting new PPP loan applications at midnight on June 30, 2020. The SBA resumed accepting PPP applications on July 6, 2020, following P.L. 116-147's enactment.

One lesson learned from the actions taken during the 111th Congress to assist small businesses during and immediately following the Great Recession is the potential benefits that can be derived from providing additional funding for the SBA's Office of Inspector General (OIG) and the Government Accountability Office (GAO). GAO and the SBA's OIG can provide Congress information that could prove useful as Congress engages in congressional oversight of the SBA's administration of legislation to address COVID-19's adverse economic impact on small businesses, provide an early warning if unforeseen administrative problems should arise, and, through investigations and audits, serve as a deterrent to fraud. Requiring the SBA to report regularly on its implementation of the CARES Act could promote transparency and assist Congress in performing its oversight responsibilities. In addition, requiring both output and outcome performance measures and requiring the SBA to report this information to Congress and the public by posting that information on the SBA's website could enhance congressional oversight and public confidence in the SBA's efforts to assist small businesses.

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Introduction

The Small Business Administration (SBA) administers several types of programs to support small businesses, including

- direct disaster loan programs for businesses, homeowners, and renters to assist their recovery from natural disasters;
- loan guaranty and venture capital programs to enhance small business access to capital;
- small business management and technical assistance training programs to assist business formation and expansion; and
- contracting programs to increase small business opportunities in federal contracting.

Congressional interest in the SBA's programs has increased in recent years, primarily because small businesses are viewed as a means to stimulate economic activity and create jobs. Congressional interest, however, has become especially acute in the wake of the Coronavirus Disease 2019 (COVID-19) pandemic's widespread adverse economic impact on the national economy, including productivity losses, supply chain disruptions, major labor dislocation, and significant financial pressure on both businesses and households.

P.L. 116-123, the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, was the first act to include provisions targeting SBA assistance to small businesses adversely affected by COVID-19. The act provided the SBA an additional $20 million for SBA disaster assistance administrative expenses and deemed the coronavirus to be a disaster under the SBA's Economic Injury Disaster Loan (EIDL) program. This change made economic injury from the coronavirus an eligible EIDL expense.

Congress followed with P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). The CARES Act made numerous changes to SBA programs, including the creation of the Paycheck Protection Program (PPP), which are loans 100% guaranteed by the SBA with a maximum term of 10 years and a maximum interest rate of no more than 4%. These loans are available to small businesses, small 501(c)(3) nonprofit organizations, and small 501(c)(19) veterans organizations—and are eligible for loan forgiveness. The SBA announced that the loans would have a two-year term at a 1.0% interest rate.

The CARES Act provides deferment relief for PPP loans and existing loans made under the 7(a), 504/CDC, and Microloan programs. The act also appropriates $349 billion for PPP loan guarantees and subsidies (to remain available through FY2021), $10 billion for Emergency EIDL grants, $675 million for the SBA's salaries and expenses account, $562 million for disaster loans, $25 million for the SBA's Office of Inspector General (OIG), $265 million for entrepreneurial development programs ($192 million for small business development centers (SBDCs), $48 million for women's business centers (WBCs), and $25 million for SBA resource partners to provide online information and training), and $17 billion for subsidies for the SBA's 7(a), 504/CDC, and Microloan programs.

A summary of the CARES Act's major small business-related provisions is presented in the **Appendix**.

The SBA started accepting PPP loan applications on April 3, 2020. Because the SBA neared its $349 billion authorization limit for Section 7(a) lending, which at that time included the PPP, the

SBA stopped accepting new PPP loan applications on April 15, 2020.[1] A total of 1,661,367 PPP loans were approved by 4,975 lenders, totaling $342,277,999,103. Most of the loans (74%) were for less than $150,000. The average loan amount was $206,022.[2]

The SBA also stopped accepting COVID-19-related EIDL and Emergency EIDL grant applications on April 15, because the SBA was approaching its disaster loan assistance credit subsidy limit.[3] COVID-19-related EIDL and Emergency EIDL grant applications already received continued to be processed on a first-in first-out basis.

The SBA began accepting new EIDL and Emergency EIDL grant applications on a limited basis on May 4 to accommodate agricultural businesses that were provided EIDL eligibility by the Paycheck Protection Program and Healthcare Enhancement Act (P.L. 116-139). The SBA also processed applications from agricultural businesses that had submitted an EIDL application prior to the legislative change. Those agricultural businesses did not need to reapply. All other EIDL loan applications that were submitted before the SBA stopped accepting new applications on April 15 continued to be processed on a first-in, first-out basis.[4] The SBA resumed the acceptance of new EIDL and EIDL advance payment applications from all borrowers on June 15, 2020.[5]

A summary of the Paycheck Protection Program and Healthcare Enhancement Act's major small business-related provisions is presented in the **Appendix**.

On July 11, 2020, the SBA announced that it had stopped accepting Emergency EIDL grant applications because the program had reached its authorization limit of $20 billion in grants.[6] The

[1] U.S. Small Business Administration (SBA), "Statement by Secretary Mnuchin and Administrator Carranza on the Paycheck Protection Program and Economic Injury Disaster Loan Program," April 15, 2020, at https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/statement-secretary-mnuchin-and-administrator-carranza-paycheck-protection-program-and-economic (hereinafter SBA, "Statement by Secretary Mnuchin and Administrator Carranza on the Paycheck Protection Program and Economic Injury Disaster Loan Program").

P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) authorized $349 billion for general business loans authorized under Section 7(a) of the Small Business Act. This authorization limit applies to the 7(a) lending programs as well as to the Paycheck Protection Program (PPP).

[2] SBA, "Paycheck Protection Program (PPP) Report through April 16, 2020, at 12 PM EST," at https://content.sba.gov/sites/default/files/2020-05/PPP%20Deck%20copy.pdf.

[3] SBA, "Statement by Secretary Mnuchin and Administrator Carranza on the Paycheck Protection Program and Economic Injury Disaster Loan Program."

[4] SBA, "Economic Injury Disaster Loan Emergency Advance," May 4, 2020, at https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/economic-injury-disaster-loan-emergency-advance.

[5] SBA, "SBA's Economic Injury Disaster Loans and Advance Program Reopened to All Eligible Small Businesses and Non-Profits Impacted by COVID-19 Pandemic," June 15, 2020, at https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sbas-economic-injury-disaster-loans-and-advance-program-reopened-all-eligible-small-businesses-and?utm_medium=email&utm_source=govdelivery.

[6] SBA, "SBA provided $20 billion to Small Businesses and Non-Profits Through the Emergency Economic Injury Disaster Loan Advance Program," press release, July 11, 2020, at https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-provided-20-billion-small-businesses-and-non-profits-through-economic-injury-disaster-loan.

As of April 24, 2020, the SBA had approved nearly 1.2 million Emergency EIDL grants, totaling $4.8 billion. See SBA, "COVID-19 EIDL Advance Reports, April 24, 2020," at https://www.sba.gov/document/report-covid-19-eidl-advance-report-04-24-20.

SBA approved 5,781,390 Emergency EIDL grant applications.[7] As of July 26, 2020, the SBA had approved 2,985,286 COVID-19-related EIDL loans, totaling over $163.8 billion.[8]

The SBA resumed the acceptance of new PPP applications on April 27, 2020, following enactment of the Paycheck Protection Program and Health Care Enhancement Act. The act increased the SBA's Section 7(a) loan authorization limit from $349 billion to $659 billion, and appropriated $321.335 billion to support that level of lending. The act also appropriated $50 billion for EIDL, $10 billion for Emergency EIDL grants, and $2.1 billion for SBA salaries and expenses.

As of July 29, 2020, the SBA had approved, after cancellations, 5,046,654 PPP loans totaling over $520.4 billion (see **Table 1**). For comparative purposes, that loan approval amount is more than the amount the SBA has approved in all of its loan programs, including disaster loans, during the last 29 years (from October 1, 1991 through December 31, 2019; $509.9 billion).[9]

Table 1. Paycheck Protection Program Loan Approvals, After Cancellations, Through July 29, 2020

Characteristic	Number of Loans Approved	Amount Approved	Average Loan Amount Approved	Lenders
Approvals (after cancellations)	5,046,654	$520,438,822,408	$103,126	5,459

Source: Small Business Administration (SBA), "Additional Program Information: approvals as of July 29, 2020," at https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program.

Note: Cancellations include duplicative loans, loans not closed for any reason, and loans that have been paid off.

As of July 17, 2020, four industry sectors had received at least 10% of PPP net loan amounts:

- Health Care and Social Assistance (12.9%);
- Professional, Scientific, and Technical Services (12.8%);
- Construction (12.4%); and
- Manufacturing (10.4%).[10]

On May 15, 2020, the House passed H.R. 6800, the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act). The HEROES Act, among other provisions, would

- expand PPP eligibility to include all 501(c) nonprofit organizations;
- provide small businesses additional flexibility by extending the PPP loan forgiveness covered period from 8 weeks to the earlier of 24 weeks or December 31, 2020;

[7] SBA, "Disaster Assistance Update Nationwide EIDL Loans July 15, 2020 (figures as of July 14, 2020)," at https://www.sba.gov/sites/default/files/2020-07/EIDL%20COVID-19%20Advance%207.15.20.pdf.

[8] SBA, "Disaster Assistance Update EIDL Advance July 27, 2020 (figures as of July 26, 2020)," at https://www.sba.gov/document/report-covid-19-eidl-loans-report-7-26-20.

[9] SBA, "WDS Lending Data File," October 18, 2019; and SBA, "Small Business Administration loan program performance: Table 2 - Gross Approval Amount by Program, December 31, 2019," at https://www.sba.gov/document/report—small-business-administration-loan-program-performance.

[10] SBA, "Paycheck Protection Program (PPP) Report: Approvals through 07/17/2020; Industry by NAICS Sector," at https://content.sba.gov/sites/default/files/2020-07/PPP_Report%20-%202020-07-19.pdf.

- eliminate the 75%/25% rule on the use of PPP loan proceeds for loan forgiveness purposes;
- provide borrowers a "safe harbor" from the loan forgiveness rehiring requirement if the borrower is unable to rehire an individual who was an employee of the recipient on or before February 15, 2020, or if the borrower can demonstrate an inability to hire similarly qualified employees on or before December 31, 2020;
- establish a minimum PPP loan maturity of five years to enable small businesses to amortize the loan over a longer period of time, which lowers monthly payments; and
- appropriate another $10 billion for Emergency EIDL grants.

A summary of the HEROES Act's major small business-related provisions is presented in the **Appendix**.

On May 28, 2020, the House passed H.R. 7010, the Paycheck Protection Program Flexibility Act. The Senate passed the bill on June 3, 2020, and President Trump signed the bill into law (P.L. 116-142) on June 5, 2020. The act, among other provisions,

- extends the PPP loan forgiveness covered period from 8 weeks after the loan's origination date to the earlier of 24 weeks after the loan's origination date or December 31, 2020;
- provides borrowers that received a PPP loan prior to the date of enactment (June 5, 2020) the option to use the CARES Act's loan forgiveness covered period of eight weeks after the loan's origination date;
- replaces the 75%/25% rule on the use of PPP loan proceeds for loan forgiveness purposes with the requirement that at least 60% of the loan proceeds be used for payroll costs and up to 40% be used for covered mortgage interest, rent, and utility payments;[11]
- provides borrowers a "safe harbor" from the loan forgiveness rehiring requirement if the borrower is unable to rehire an individual who was an employee of the recipient on or before February 15, 2020, or if the borrower can demonstrate an inability to hire similarly qualified employees on or before December 31, 2020;
- establishes a minimum PPP loan maturity of five years for loans made on or after the date of enactment; and
- extends the PPP loan deferral period from six months (under SBA regulations) to the date that the SBA remits the borrower's loan forgiveness amount to the lender or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period.

Under the act, June 30, 2020, remained the last date on which a PPP loan application could be approved. A summary of the Paycheck Protection Program Flexibility Act is presented in the **Appendix**.

As required by the CARES Act, the SBA stopped accepting new PPP loan applications at midnight on June 30, 2020.

[11] If a borrower uses less than 60% of the PPP loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60% of the loan forgiveness amount having been used for payroll costs.

On July 4, 2020, President Trump signed into law P.L. 116-147, to extend the authority for commitments for the paycheck protection program and separate amounts authorized for other loans under Section 7(a) of the Small Business Act, and for other purposes. The law extended the PPP covered loan period from June 30, 2020, to August 8, 2020, and authorized $659 billion for PPP loan commitments and $30 billion for 7(a) loan commitments. The Senate passed the bill by voice vote on June 30, 2020, and the House passed it by unanimous consent on July 1, 2020.

S. 4321, the Continuing Small Business Recovery and Paycheck Protection Program Act, was introduced on July 27, 2020. Among other provisions, it would

- extend the PPP loan covered period to December 31, 2020, and reduce the maximum PPP loan amount from $10 million to $2 million;
- expand PPP forgivable expenses to include covered operations expenditures (e.g., software, cloud computing, and other human resources and accounting needs), property damages due to public disturbances that occurred during 2020 (not covered by insurance or other compensation), covered supplier costs essential to the recipient's current operations, and covered worker protection expenditures to comply with federal health and safety guidelines related to COVID-19;
- allow borrowers to select a preferred 8-week period after the loan's origination date through December 31, 2020, for determining loan forgiveness;
- create simplified loan forgiveness application processes for loans under $150,000 and for loans between $150,000 and $2 million. The SBA would retain the right to review and audit these loans for fraud. Reporting of demographic information would be optional;
- expand eligibility to include certain 501(c)(6) organizations, including Chambers of Commerce and Destination Marketing Organizations, that have 300 or fewer employees, do not receive more than 10% of their receipts from lobbying, and whose lobbying activities do not comprise more than 10% of their total activities. Recipients cannot use any loan proceeds for lobbying activities;
- allow second PPP "draw" loans through December 31, 2020, for PPP borrowers that meet the SBA's revenue standard, if applicable, have not more than 300 employees, and can demonstrate at least a 50% reduction in gross receipts in the first or second quarter of 2020 relative to the same 2019 quarter. Several types of PPP eligible entities, such as publicly traded companies, would be ineligible for a second loan. The maximum loan size would equal 2.5 times average monthly payroll costs, up to $2 million (not more than $10 million in the aggregate). Full loan forgiveness would be based on a 60/40 cost allocation between payroll and eligible non-payroll costs; and
- increase the PPP authorization amount from $659 billion to $749 billion, rescind $100 billion from the SBA's business loan program account, and appropriate an additional $190 billion for the cost of PPP and PPP second draw loans. In funding, $25 billion would be set-aside for entities employing 10 or fewer employees and $10 billion would be set-aside for community lenders.

A summary of the Continuing Small Business Recovery and Paycheck Protection Program Act's major small business-related provisions is presented in the **Appendix**.

This report begins with an overview of SBA disaster loans and discusses various issues related to providing disaster assistance to small businesses adversely affected by COVID-19. It then presents an overview and discussion of SBA access to capital programs (including the 7(a) loan

guarantee, 504/CDC loan guarantee, and Microloan program), SBA management and technical training programs (SBDCs, WBCs, SCORE, and Microloan technical assistance), and SBA contracting programs.

Disaster Loans

Overview

SBA disaster assistance is provided in the form of loans, not grants, which must be repaid to the federal government. The SBA's disaster loans are unique in two respects: (1) they go directly to the ultimate borrower, and (2) they are not limited to small businesses.[12]

SBA disaster loans for physical damage are available to individuals, businesses of all sizes, and nonprofit organizations in declared disaster areas.[13] SBA disaster loans for economic injury (EIDL) are available to eligible small businesses, small agricultural cooperatives, small businesses engaged in aquaculture, and most private, nonprofit organizations in declared disaster areas. The SBA issues about 80% of its direct disaster loans to individuals and households (renters and property owners) to repair and replace homes and personal property. The SBA disbursed $401 million in disaster loans in FY2016, $889 million in FY2017, $3.59 billion in FY2018, and $1.5 billion in FY2019.[14]

Types of Disaster Loans

The SBA Disaster Loan Program includes home disaster loans, business physical disaster loans, and EIDLs.[15] This report focuses on the EIDL program because it is currently being used to address the adverse economic impact of COVID-19 on small businesses and other EIDL-eligible organizations.

P.L. 116-123, the Coronavirus Preparedness and Response Supplemental Appropriations Act, 2020, deemed the coronavirus to be a disaster under the EIDL program. This change made economic injury from the coronavirus an eligible EIDL expense. The act also provided the SBA an additional $20 million for disaster loan administrative expenses.

For a discussion of all SBA disaster loans, see CRS Report R41309, *The SBA Disaster Loan Program: Overview and Possible Issues for Congress*, by Bruce R. Lindsay.

Economic Injury Disaster Loans

EIDLs provide up to $2 million for working capital (including fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster's impact) to help small businesses, small agricultural cooperatives, small businesses engaged in aquaculture, and most

[12] 13 C.F.R. §123.200.

[13] 13 C.F.R. §123.105 and 13 C.F.R. §123.203.

[14] SBA, Office of Legislative and Congressional Affairs, "WDS Report Amount Fiscal Year 2019, Table 1.4 Disbursements by Program," October 18, 2019.

[15] The SBA also offers military reservist economic injury disaster loans. These loans are available when economic injury is incurred as a direct result of a business owner or an essential employee being called to active duty. These loans are generally not associated with disasters. See CRS Report R42695, *SBA Veterans Assistance Programs: An Analysis of Contemporary Issues*, by Robert Jay Dilger and Sean Lowry.

private, nonprofit organizations meet their financial obligations and operating expenses that cannot be met as a direct result of the disaster.[16]

Public nonprofit organizations and several specific business types are not eligible for EIDL assistance. Ineligible businesses include, but are not limited to, the following:

- businesses that do not meet the SBA's small business eligibility criteria, including the SBA's size standards;
- businesses that derive more than one-third of their annual gross revenue from legal gambling activities;
- casinos and racetracks;
- religious organizations;
- political and lobbying concerns;
- government-owned concerns (expect for businesses owned or controlled by a Native American tribe); and
- businesses determined by the SBA to have credit available elsewhere.[17]

EIDL loan amounts are based on actual economic injury and financial needs, regardless of whether the business or eligible nonprofit suffered any property damage. If an applicant is a major source of employment, the SBA may waive the $2 million statutory limit.[18] In addition, EIDL loan proceeds cannot be used to refinance long-term debt, expand facilities, pay dividends or bonuses, or for relocation.[19]

Applicants must have a credit history acceptable to the SBA, the ability to repay the loan, and present collateral for all EIDL loans over $25,000 if available. The SBA collateralizes real estate or other assets when available, but it will not deny a loan for lack of collateral.[20]

EIDL interest rates are determined by formulas established in law (discussed later) and are fixed for the life of the loan. EIDL interest rate ceilings are statutorily set at no more than 4% per annum. EIDL applicants are not eligible if the SBA determines that the applicant has credit available elsewhere.

EIDL loans can have maturities up to 30 years. The SBA determines an appropriate installment payment based on each borrower's financial condition, which, in turn, determines the loan term.[21] There are no prepayment penalties.

SBA EIDL assistance is not automatically available. It must be requested in one of two ways: (1) a state or territory governor can submit a request to the President for a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act[22] or (2) a state or

[16] SBA, "Fact Sheet – Economic Injury Disaster Loans, California Declaration #16332," March 19, 2020, at https://disasterloan.sba.gov/ela/Declarations/ViewDisasterDocument/3485 (hereinafter cited as SBA, "Fact Sheet").

[17] SBA, "Disaster Assistance Program, SOP 50 30 9, pp. 70, 71, at https://www.sba.gov/document/sop-50-30-9-disaster-assistance-program-posted-05-31 (hereinafter cited as SBA, "Disaster Assistance Program SOP").

[18] SBA, "Fact Sheet."

[19] For the full list of ineligible uses of EIDL loan proceeds, see SBA, "Disaster Assistance Program SOP," pp. 75-76.

[20] SBA, "Fact Sheet."

[21] SBA, "Fact Sheet."

[22] P.L. 93-288, as amended. Tribal nations are also authorized to request and receive major disaster assistance.

governor can submit a request for SBA EIDL from the SBA Administrator under the Small Business Act.

There was some initial concern that COVID-19 would not be a declarable disaster under the Small Business Act because it did not meet the legal definition for a disaster. As mentioned, to prevent any potential ambiguity, Title II of P.L. 116-123 deemed the coronavirus a disaster under Section 7(b)(2)(D) of the Small Business Act, making economic injury from the coronavirus an eligible expense under the SBA's Economic Injury Disaster Loan program.

Initial EIDL Response to COVID-19

On March 16, 2020, the SBA Administrator began issuing declarations for SBA EIDLs in response to states seeking SBA disaster assistance for small businesses.[23] The SBA changed its requirement that a state or territory "provide documentation certifying that at least five small businesses have suffered substantial economic injury as a result of the disaster, with at least one business located in each declared county/parish."[24] Under new criteria, states and territories now "are only required to certify that at least five small businesses within the state/territory have suffered substantial economic injury, regardless of where the businesses are located."[25] The SBA announced that under the new criteria EIDL assistance may be available statewide instead of just within specific identified counties in declarations related to COVID-19.

EIDL Funding

Prior to the CARES Act's enactment, the SBA had about $1.1 billion in disaster loan credit subsidy available to support about $7 billion to $8 billion in disaster loans. Loan credit subsidy is the amount provided to cover the government's cost of extending or guaranteeing credit.[26] The loan credit subsidy amount is about one-seventh of the cost of each disaster loan.[27] The credit subsidy amount is used to protect the government against the risk of estimated shortfalls in loan repayments. There was some concern that the SBA's funding for disaster loan credit subsidies would have proven to be insufficient to meet the demand for disaster loans now that EIDL eligibility has been extended to economic injuries related to COVID-19.

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[23] A similar definitional issue may exist under the Stafford Act which does not specify an infectious disease as an incident in its definition of a major disaster. There are, however, indications that the President considers COVID-19 a major disaster. See the White House, *Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act*, March 13, 2020, at https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/.

[24] SBA, *SBA Updates Criteria on States for Requesting Disaster Assistance Loans for Small Businesses Impacted by Coronavirus (COVID-19)*, March 17, 2020, at https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-updates-criteria-states-requesting-disaster-assistance-loans-small-businesses-impacted (hereinafter cited as SBA, *SBA Updates Criteria on States for Requesting Disaster Assistance*).

[25] SBA, *SBA Updates Criteria on States for Requesting Disaster Assistance*.

[26] "The Federal Credit Reform Act of 1990 (FCRA) requires agencies to estimate the cost to the government of extending or guaranteeing credit. This cost, referred to as subsidy cost, equals the net present value of estimated cash flows from the government (e.g., loan disbursements and claim payments to lenders) minus estimated cash flows to the government (e.g., loan repayments, interest payments, fees, and recoveries on defaulted loans) over the life of the loan, excluding administrative costs." See U.S. Government Accountability Office, *Current Method to Estimate Credit Subsidy Costs Is More Appropriate for Budget Estimates Than a Fair Value Approach*, GAO-16-41, January 29, 2016, p. i, at https://www.gao.gov/products/GAO-16-41.

[27] SBA, *FY2021 Congressional Budget Justification FY2019 Annual Performance Report*," p. 13, at https://www.sba.gov/document/report—congressional-budget-justification-annual-performance-report (hereinafter cited as SBA, *FY2021 Congressional Budget Justification FY2019 Annual Performance Report*").

The CARES Act addressed this issue by providing an additional $562 million to support disaster loans and $10 billion to support the Emergency EIDL grant program. As mentioned, the Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139) appropriated an additional $50 billion for EIDL and $10 billion for Emergency EIDL grants.

Surge Issues and Loan Processing Times

Historically, the majority (80%) of SBA disaster loans have been for individuals and households. The significant number of businesses that will likely apply for EIDL assistance because of the economic damage the coronavirus caused may require the SBA to enhance its disaster business loan portfolio and increase staff to meet demand. As mentioned, in anticipation of increased EIDL demand, Title II of P.L. 116-123 provided the SBA with an additional $20 million, to remain available until expended, for SBA Disaster Loan Program administrative expenses.

A Government Accountability Office (GAO) report found that the SBA provided disaster loans in roughly 18 days or less in response to Hurricanes Harvey, Irma, and Maria in 2017.[28] Although the 2017 hurricanes created a high demand at that time for SBA disaster loans, it is unclear if GAO's findings can be extrapolated to the current COVID-19 pandemic. The sheer volume of EIDL applications in response to COVID-19 could be significantly higher because COVID-19 affects a much larger number of small businesses and organizations. In addition, the time needed for the SBA to expand the disaster loan portfolio and hire and train new and existing staff could compromise loan processing times.

Loan processing times may be of significant concern to Congress and business owners alike. If loans are not processed quickly enough, businesses nationwide may suffer economic damage and, potentially, collapse. Consequently, Congress may examine options that could expedite loan processing, such as increased staffing and surge capabilities, waiving application requirements, and the use of expedited loans or bridge loans.

Expedited Disaster Loans and Bridge Loans

In response to criticism of SBA's disaster loan processing following the Gulf Coast hurricanes of 2005 and 2008, Congress passed P.L. 110-234, the Small Business Disaster Response and Loan Improvements Act of 2008.[29] The act created several programs to improve the disaster loan processing.[30] Among them were the following:

- Expedited Disaster Assistance Loan Program (EDALP) to provide eligible EIDL applicants with expedited access to short-term guaranteed loans of up to $150,000.[31]
- Immediate Disaster Assistance Program (IDAP) to provide eligible EIDL applicants with guaranteed bridge loans of up to $25,000 from private-sector

[28] U.S. Government Accountability Office, *Disaster Loan Processing Was Timelier, but Planning Improvements and Pilot Program Evaluation Needed*, GAO-20-369, March 9, 2020, at https://www.gao.gov/products/GAO-20-168.

[29] P.L. 110-234, the Small Business Disaster Response and Loan Improvements Act of 2008 (Title XII, subtitle B of the Food, Conservation, and Energy Act of 2008), as amended by P.L. 110-246, the Food, Conservation, and Energy Act of 2008 (Title XII, subtitle B of the Food, Conservation, and Energy Act of 2008)(hereinafter cited as P.L. 110-234).

[30] SBA, "Immediate, Expedited, and Private Disaster Assistance Loan Programs," 80 *Federal Register* 63715-63717, October 21, 2015.

[31] P.L. 110-234, Sec. 12085.

lenders, with an SBA decision within 36 hours of a lender's application on behalf of a borrower.[32]

- Private Disaster Assistance Program (PDAP) to make guaranteed loans available to homeowners and eligible EIDL applicants in an amount up to $2 million.[33]

The SBA, however, had difficulty implementing these programs. In his statement before the House Committee on Small Business, then-acting (and now the current) SBA Inspector General, Hannibal "Mike" Ware, stated

> In the wake of disasters like Hurricane Sandy, congressional representatives expressed concern that SBA did not effectively develop and utilize programmatic innovations intended to assist in disbursing funds quickly and effectively. For instance, SBA did not implement statutory provisions of the Immediate Disaster Assistance Program (IDAP), Economic Injury Disaster Assistance Program (EDAP), and the Private Disaster Assistance Programs (PDAP), collectively known as the "Guaranteed Disaster Assistance Programs" mandated by Congress in 2008. These provisions were enacted with the expectation that they would allow SBA to provide expedited disaster loans in partnership with private sector lenders. These provisions remain unimplemented.[34]

He added that the SBA had difficulty implementing the programs because private lenders were reluctant to participate in the program. He mentioned the following impediments:

> [the] cost of program participation under the current pricing structure and the lender's lack of infrastructure to deliver loans that meet SBA standards (such as evaluating eligibility and duplication of benefits); loan terms that include longer maturities than conventional lending practices; the high cost of providing these loans; inadequate collateral security; and their lack of expertise in the home loan sector. Lenders were also concerned that loan guarantees would be denied due to improper eligibility determinations.

Because these programs had limited use, Congress included a provision in P.L. 115-141, the Consolidated Appropriations Act, 2018, which permanently cancelled $2.6 million in unobligated balances available for the IDAP and the EDALP.

The CARES Act addressed loan processing issues by authorizing the SBA Administrator, in response to economic injuries caused by COVID-19, to

- waive the "credit not available elsewhere" requirement,
- approve an applicant based solely on their credit score,
- not require applicants to submit a tax return or tax return transcript for approval,
- waive any rules related to the personal guarantee on advances and loans of not more than $200,000, and
- waive the requirement that the applicant needs to be in business for the one-year period before the disaster declaration (except that no waiver may be made for a business that was not in operation on January 31, 2020).

[32] P.L. 110-234, Sec. 12084.

[33] P.L. 110-234, Sec. 12083.

[34] Testimony of Hannibal "Mike" Ware, Acting Inspector General, United States Small Business Administration, U.S. Congress, House Committee on Small Business, *Storm Watch: Making Sure SBA's Disaster Loan Program Is Prepared*, 115th Cong., 1st sess., April 26, 2017, p. 33.

SBA EIDL Repayment and Forgiveness

Under present law and regulations, the first SBA EIDL payment is normally due five months after disbursement. However, on March 23, 2020, the SBA announced that it would defer payments on existing disaster loans through December 31, 2020, "to help borrowers during this unprecedented time."[35] The SBA also announced that payments on new EIDL loans would be deferred for one year (interest does accrue).

The CARES Act provides "impacted borrowers" adversely affected by COVID-19 complete payment deferment relief on a covered loan in its Paycheck Protection Program (PPP). The deferment may be for not less than six months and not more than one year if the borrower was in operation on February 15, 2020, and has an application for a covered loan approved or pending approval on or after the date of enactment. The SBA announced that PPP loan payments will be deferred for six months. However, interest will continue to accrue on these loans during the six-month deferment.[36]

The CARES Act also provides for PPP loan forgiveness under specified conditions related to the borrower's retention of employees. Loan forgiveness is rare, but has been used in the past to help businesses that were having difficulty repaying their loans. For example, loan forgiveness was granted after Hurricane Betsy, when President Lyndon B. Johnson signed the Southeast Hurricane Disaster Relief Act of 1965.[37] Section 3 of the act authorized the SBA Administrator to grant disaster loan forgiveness or issue waivers for property lost or damaged in Florida, Louisiana, and Mississippi as a result of the hurricane. The act stated that

> to the extent such loss or damage is not compensated for by insurance or otherwise, (1) shall at the borrower's option on that part of any loan in excess of $500, (A) cancel up to $1,800 of the loan, or (B) waive interest due on the loan in a total amount of not more than $1,800 over a period not to exceed three years; and (2) may lend to a privately owned school, college, or university without regard to whether the required financial assistance is otherwise available from private sources, and may waive interest payments and defer principal payments on such a loan for the first three years of the term of the loan.[38]

Disaster Grants

Historically, businesses that suffer uninsured loss as a result of a major disaster declaration are not eligible for Federal Emergency Management Agency (FEMA) grant assistance, and grant assistance from other federal sources is limited. On some occasions, Congress has provided disaster assistance to businesses through the Department of Housing and Urban Development's (HUD's) Community Development Block Grant (CDBG) program. The CDBG program provides loans and grants to eligible businesses to help them recover from disasters as well as grants intended to attract new businesses to the disaster-stricken area. In a few cases, CDBG has also been used to compensate businesses and workers for lost wages or revenues.

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[35] SBA, "Carranza Implements Automatic Deferment on Existing SBA Disaster Loans Through End of 2020," March 23, 2020, at https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/carranza-implements-automatic-deferment-existing-sba-disaster-loans-through-end-2020.

[36] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program," 85 *Federal Register* 20813, April 15, 2020.

[37] P.L. 89-339, 79 Stat. 1301.

[38] P.L. 89-339, 79 Stat. 1301.

Although the President issued the first major disaster declaration to New York for COVID-19,[39] CDBG disaster assistance is not available for all major disasters. States can use CDBG funding to respond to emergencies or other "urgent needs" through the conventional CDBG entitlement and states program,[40] but existing (or future) CDBG monies generally must be reprogrammed in consultation with HUD to respond to the emergency.[41] For these reasons, CDBG is generally used for long-term recovery needs rather than providing immediate, direct disaster assistance.

Thus, Congress could consider providing business grants through FEMA or the SBA. Enlisting FEMA to administer the program may offer several benefits. First, FEMA already has grant processing operations in place. It might be relatively easier to expand the operations to include small businesses disaster grants rather than establishing new grant-making operations within SBA. Second, having FEMA administer the small business disaster grant program may limit duplication of administrative functions between FEMA and SBA. Third, it would provide access to FEMA's Disaster Relief Fund (DRF) which at the time of this writing has roughly $41 billion for disaster assistance activities.[42]

In contrast, Congress could decide to have SBA administer the program because it already has a framework in place to evaluate business disaster needs and disaster loan eligibility. Congress may need to make statutory changes to SBA's disaster loan account or authorize a new account to receive appropriations for disaster grants.

Another concern about providing grants to businesses is whether businesses provided SBA EIDL will be eligible for grant assistance. For example, in some cases homeowners and businesses that accepted disaster loans were deemed ineligible for disaster grants. This may make some businesses reluctant to apply for SBA EIDL and instead hold out for the possibility of a grant. Congress may therefore allow businesses to use grant money to pay down their SBA EIDL.

Another potential concern is waste, fraud, and abuse. For example, Section 1210 of the Disaster Recovery Reform Act of 2018 (DRRA, Division D of P.L. 115-254) prohibits the President from determining loans as duplicative assistance provided all federal assistance is used toward loss resulting from an emergency or major disaster under the Stafford Act. Consequently, businesses that obtain SBA EIDL and a grant for the same purposes would conceivably not be required to pay back the duplicative award.

Congress could consider limiting grants to relatively small businesses as compared to what is considered a small business according to SBA size standards.[43] For example, business grants could be limited to businesses with 10 or fewer employees.

The CARES Act authorizes the SBA Administrator to provide up to $10,000 as an advance payment in the amount requested within three days after receiving an EIDL application from an

[39] Federal Emergency Management Agency, *New York Covid-19 Pandemic (DR-4480)*, March 3, 2020, at https://www.fema.gov/disaster/4480.

[40] For example, the City of Seattle is currently administering $10,000 grants to small businesses using CDBG funds to respond to COVID-19.

[41] For eligible Community Development Block Grant activities related to COVID-19, see U.S. Department of Housing and Urban Development, "Quick Guide to CDBG Eligible Activities to Support Infectious Disease Response," March 19, 2020, at https://files.hudexchange.info/resources/documents/Quick-Guide-CDBG-Infectious-Disease-Response.pdf.

[42] Federal Emergency Management Agency, *Disaster Relief Fund: Monthly Report*, March 6, 2020, at https://www.fema.gov/media-library/assets/documents/31789. For more information on the DRF see CRS Report R45484, *The Disaster Relief Fund: Overview and Issues*, by William L. Painter.

[43] For more information and analysis concerning SBA size standards, see CRS Report R40860, *Small Business Size Standards: A Historical Analysis of Contemporary Issues*, by Robert Jay Dilger.

eligible entity. Applicants are not required to repay the advance payment, referred to in the CARES Act as an Emergency EIDL grant, even if subsequently denied an EIDL loan. Due to anticipated demand, the SBA limited Emergency EIDL grants to $1,000 per employee, up to a maximum of $10,000.

The CARES Act addresses waste, fraud, and abuse by providing the SBA's OIG $25 million for oversight of the SBA's administration of its lending programs and for investigations to serve as a general deterrent to fraud, waste, and abuse.

SBA EIDL Interest Rates

According to the SBA's March 17, 2020, press release, SBA EIDL interest rates for COVD-19 are 3.75% for businesses and 2.75% for nonprofit organizations.[44]

SBA disaster loan interest rates have been a long-standing congressional concern. First, there is concern about the ability of disaster victims to pay off their loans. Second, there is concern about how interest rates are determined given the complexity of the statutory language about disaster loan interest rates. 15 U.S.C. §636(d)(5)(C)) states that interest rates are "in the case of a business, private nonprofit organization, or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 per centum per annum."[45] To determine EIDL interest rates, SBA uses a formula under 15 U.S.C. §636(d)(4)(A):

> Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: Provided, That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

Congress could request SBA to reevaluate its interpretation of 15 U.S.C. §636(d)(4)(A) and provide detailed information explaining how the formula provides nonprofit organizations with lower interest rates than small businesses. Alternatively, Congress could change the formula under the Small Business Act if it considered the language ambiguous, or it could designate an interest rate (including a zero interest rate) for all SBA EIDL for the duration of COVID-19.

[44] Small Business Administration, *SBA Updates Criteria on States for Requesting Disaster Assistance Loans for Small Businesses Impacted by Coronavirus (COVID-19)*, March 17, 2020, at https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-updates-criteria-states-requesting-disaster-assistance-loans-small-businesses-impacted.

[45] Only businesses and nonprofit organizations that cannot get credit elsewhere are eligible for SBA EIDL.

SBA Capital Access Programs

Overview

The SBA has authority to make direct loans but, with the exception of disaster loans and loans to Microloan program intermediaries, has not exercised that authority since 1998.[46] The SBA indicated that it stopped issuing direct business loans primarily because the subsidy rate was "10 to 15 times higher" than the subsidy rate for its loan guaranty programs.[47] Instead of making direct loans, the SBA guarantees loans issued by approved lenders to encourage those lenders to provide loans to small businesses "that might not otherwise obtain financing on reasonable terms and conditions."[48] With few exceptions, to qualify for SBA assistance, an organization must be both a for-profit business and small.[49]

What Is a "Small Business"?

To participate in any of the SBA loan guaranty programs, a business must meet the Small Business Act's definition of *small business*. This is a business that

- is organized for profit;
- has a place of business in the United States;
- operates primarily within the United States or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor;
- is independently owned and operated;
- is not dominant in its field on a national basis;[50] and
- does not exceed size standards established, and updated periodically, by the SBA.[51]

The business may be a sole proprietorship, partnership, corporation, or any other legal form.

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[46] Prior to October 1, 1985, the SBA provided direct business loans to qualified small businesses. From October 1, 1985, to September 30, 1994, SBA direct business loan eligibility was limited to qualified small businesses owned by individuals with low incomes or located in areas of high unemployment, owned by Vietnam-era or disabled veterans, owned by the handicapped or certain organizations employing them, and certified under the minority small business capital ownership development program. Microloan program intermediaries were also eligible. On October 1, 1994, SBA direct loan eligibility was limited to Microloan program intermediaries and small businesses owned by the handicapped. Funding to support direct loans to the handicapped through the Handicapped Assistance (renamed the Disabled Assistance) Loan program ended in 1996. The last loan under the Disabled Assistance Loan program was issued in FY1998. See U.S. Congress, House Committee on Small Business, *Summary of Activities*, 105rd Cong., 2nd sess., January 2, 1999, H.Rept. 105-849 (Washington, DC: GPO, 1999), p. 8.

[47] U.S. Congress, Senate Committee on Small Business, *Hearing on the Proposed Fiscal Year 1995 Budget for the Small Business Administration*, 103rd Cong., 2nd sess., February 22, 1994, S.Hrg. 103-583 (Washington, DC: GPO, 1994), p. 20.

[48] SBA, *Fiscal Year 2010 Congressional Budget Justification*, p. 30, at https://www.sba.gov/sites/default/files/Congressional_Budget_Justification_2010.pdf.

[49] The SBA provides financial assistance to nonprofit organizations to provide training to small business owners and to provide loans to small businesses through the SBA Microloan program. Also, nonprofit child care centers are eligible to participate in SBA's Microloan program.

[50] 13 C.F.R. §121.105.

[51] P.L. 111-240, the Small Business Jobs Act of 2010, requires the SBA to conduct a detailed review of not less than

What Is "Small"?[52]

The SBA uses two measures to determine if a business is small: SBA-derived industry specific size standards or a combination of the business's net worth and net income. For example, businesses participating in the SBA's 7(a) loan guaranty program are deemed small if they either meet the SBA's industry-specific size standards for firms in 1,047 industrial classifications in 18 subindustry activities described in the North American Industry Classification System (NAICS) or do not have more than $15 million in tangible net worth and not more than $5 million in average net income after federal taxes (excluding any carryover losses) for the two full fiscal years before the date of the application. All of the company's subsidiaries, parent companies, and affiliates are considered in determining if it meets the size standard.[53]

The SBA's industry size standards vary by industry, and they are based on one of the following four measures: the firm's (1) average annual receipts in the previous three (or five) years, (2) number of employees, (3) asset size, or (4) for refineries, a combination of number of employees and barrel per day refining capacity. Historically, the SBA has used the number of employees to determine if manufacturing and mining companies are small and average annual receipts for most other industries.

The SBA's size standards are designed to encourage competition within each industry. They are derived through an assessment of the following four economic factors: "average firm size, average assets size as a proxy of start-up costs and entry barriers, the 4-firm concentration ratio as a measure of industry competition, and size distribution of firms."[54] The SBA also considers the ability of small businesses to compete for federal contracting opportunities and, when necessary, several secondary factors "as they are relevant to the industries and the interests of small businesses, including technological change, competition among industries, industry growth trends, and impacts of size standard revisions on small businesses."[55]

SBA Loan Guarantee Programs

Overview

The SBA provides loan guarantees for small businesses that cannot obtain credit elsewhere. Its largest loan guaranty programs are the 7(a) loan guaranty program, the 504/CDC loan guaranty program, and the Microloan program.

The SBA's loan guaranty programs require personal guarantees from borrowers and share the risk of default with lenders by making the guaranty less than 100%. In the event of a default, the borrower owes the amount contracted less the value of any collateral liquidated. The SBA can attempt to recover the unpaid debt through administrative offset, salary offset, or IRS tax refund offset. Most types of businesses are eligible for loan guarantees. A list of ineligible businesses

one-third of the SBA's industry size standards every 18 months beginning on the new law's date of enactment (September 27, 2010) and ensure that each size standard is reviewed at least once every five years.

[52] For additional information and analysis, see CRS Report R40860, *Small Business Size Standards: A Historical Analysis of Contemporary Issues*, by Robert Jay Dilger.

[53] 13 C.F.R. §121.201 and P.L. 111-240, the Small Business Act of 2010, §1116. Alternative Size Standards.

[54] SBA, Office of Government Contracting and Business Development, "SBA Size Standards Methodology," April 2019, p. 29, at https://www.sba.gov/document/support—size-standards-methodology-white-paper (hereinafter cited as SBA, "SBA Size Standards Methodology").

[55] SBA, "SBA Size Standards Methodology," p. 1.

(such as insurance companies, real estate investment firms, firms involved in financial speculation or pyramid sales, and businesses involved in illegal activities) is contained in 13 C.F.R. §120.110.[56] With one exception, nonprofit and charitable organizations are also ineligible.[57]

Most of these programs charge fees to help offset program costs, including costs related to loan defaults. In most instances, the fees are set in statute. For example, for 7(a) loans with a maturity exceeding 12 months, the SBA is authorized to charge lenders an up-front guaranty fee of up to 2% for the SBA guaranteed portion of loans of $150,000 or less, up to 3% for the SBA guaranteed portion of loans exceeding $150,000 but not more than $700,000, and up to 3.5% for the SBA guaranteed portion of loans exceeding $700,000. Lenders who have a 7(a) loan that has a SBA guaranteed portion in excess of $1 million can be charged an additional fee not to exceed 0.25% of the guaranteed amount in excess of $1 million.

7(a) loans are also subject to an ongoing servicing fee not to exceed 0.55% of the outstanding balance of the guaranteed portion of the loan.[58] In addition, lenders are authorized to collect fees from borrowers to offset their administrative expenses.

In an effort to assist small business owners, the SBA has, from time-to-time, reduced its fees. For example, in FY2019, the SBA waived the annual service fee for 7(a) loans of $150,000 or less made to small businesses located in a rural area or a HUBZone and reduced the up-front one-time guaranty fee for these loans from 2.0% to 0.6667% of the guaranteed portion of the loan.[59]

In addition, pursuant to P.L. 114-38, the Veterans Entrepreneurship Act of 2015, the SBA is required to waive the up-front, one-time guaranty fee on all veteran loans under the 7(a) SBAExpress program (up to and including $350,000) "except during any upcoming fiscal year for which the President's budget, submitted to Congress, includes a cost for the 7(a) program, in its entirety, that is above zero."[60]

The SBA's goal is to achieve a zero subsidy rate, meaning that the appropriation of budget authority for new loan guaranties is not required.

7(a) Loan Guaranty Program[61]

The 7(a) loan guaranty program is named after the section of the Small Business Act that authorizes it. The loans are made by SBA lending partners (mostly banks but also some other financial institutions) and partially guaranteed by the SBA. Borrowers may use 7(a) loan proceeds

[56] Title 13 of the Code of Federal Regulations can be viewed at https://www.gpo.gov/fdsys/browse/collectionCfr.action?selectedYearFrom=2016&go=Go.

[57] P.L. 105-135, the Small Business Reauthorization Act of 1997, expanded the SBA's Microloan program's eligibility to include borrowers establishing a nonprofit child care business.

[58] 15 U.S.C. §636(a)(23)(a).

[59] SBA, "SBA Information Notice: 7(a) Fees Effective on October 1, 2018," at https://www.sba.gov/document/information-notice-5000-180010-7a-fees-effective-october-1-2018.

[60] The SBA had waived the up-front, one-time guaranty fee on all veteran loans under the 7(a) SBAExpress program from January 1, 2014, through the end of FY2015. P.L. 114-38 made the SBAExpress program's veteran fee waiver permanent, except during any upcoming fiscal year for which the President's budget, submitted to Congress, includes a cost for the 7(a) program, in its entirety, that is above zero. The SBA waived the fee, pursuant to P.L. 114-38, in FY2016, FY2017, FY2018, and FY2019.

[61] For further information and analysis, see CRS Report R41146, *Small Business Administration 7(a) Loan Guaranty Program*, by Robert Jay Dilger.

to establish a new business or to assist in the operation, acquisition, or expansion of an existing business. 7(a) loan proceeds may be used to

- acquire land (by purchase or lease);
- improve a site (e.g., grading, streets, parking lots, landscaping), including up to 5% for community improvements such as curbs and sidewalks;
- purchase one or more existing buildings;
- convert, expand, or renovate one or more existing buildings;
- construct one or more new buildings;
- acquire (by purchase or lease) and install fixed assets;
- purchase inventory, supplies, and raw materials;
- finance working capital; and
- refinance certain outstanding debts.[62]

In FY2019, the SBA approved 51,907 7(a) loans to 46,111 small businesses totaling $23.2 billion. In FY2019, there were 1,708 active lending partners providing 7(a) loans.

The 7(a) program's current guaranty rate is 85% for loans of $150,000 or less and 75% for loans greater than $150,000 (up to a maximum guaranty of $3.75 million, or 75% of $5 million).[63] Although the SBA's offer to guarantee a loan provides an incentive for lenders to make the loan, lenders are not required to do so.

A 7(a) loan is required to have the shortest appropriate term, depending upon the borrower's ability to repay. The maximum term is 10 years, unless the loan finances or refinances real estate or equipment with a useful life exceeding 10 years. In that case, the loan term can be up to 25 years, including extensions.[64]

Lenders are permitted to charge borrowers fees to recoup specified expenses and are allowed to charge borrowers "a reasonable fixed interest rate" or, with the SBA's approval, a variable interest rate. The SBA uses a multistep formula to determine the maximum allowable fixed interest rate for all 7(a) loans (with the exception of the Export Working Capital Program and Community Advantage loans) and periodically publishes that rate and the maximum allowable variable interest rate in the *Federal Register*.[65]

[62] 13 C.F.R. §120.120.

[63] Exceptions to this general schedule of guaranty rates include loans made under the International Trade, Export Working Capital Program, or Export Express (90% guaranty); and the SBAExpress program (50% guaranty).

[64] 13 C.F.R. §120.212. A portion of a 7(a) loan used to acquire or improve real property may have a term of 25 years plus an additional period needed to complete the construction or improvements.

[65] For fixed interest rates, the SBA, effective November 6, 2018, uses the prime rate (see 13 C.F.R. §120.214(c)) in effect on the first business day of the month as the base rate and increases the maximum allowable interest rate spread as follows: for fixed rate loans of $25,000 or less, prime plus 600 basis points, plus the 200 basis points permitted by 13 C.F.R. §120.215; for fixed rate loans over $25,000 but not exceeding $50,000, prime plus 600 basis points, plus the 100 basis points permitted by 13 C.F.R. §120.215; for fixed rate loans greater than $50,000 but not exceeding $250,000, prime plus 600 basis points; and for fixed rate loans over $250,000, prime plus 500 basis points. SBA, "Maximum Allowable 7(a) Fixed Interest Rates," 83 *Federal Register* 55478, November 6, 2018. For the previously used fixed interest rates formula, see SBA, "Business Loan Program Maximum Allowable Fixed Rate," 74 *Federal Register* 50263-50264, September 30, 2009.

In July 2020, the maximum allowable fixed interest rates are 11.25% for 7(a) loans of $25,000 or less; 10.25% for loans over $25,000 but not exceeding $50,000; 9.25% for loans over $50,000 up to and including $250,000; and 8.25% for loans greater than $250,000.[66]

Maximum interest rates allowed on variable-rate 7(a) loans are pegged to either the prime rate, the 30-day London Interbank Offered Rate (LIBOR) plus 3%, or the SBA optional peg rate, which is a weighted average of rates that the federal government pays for loans with maturities similar to the guaranteed loan. The allowed spread over the prime rate, LIBOR base rate, or SBA optional peg rate depends on the loan amount and the loan's maturity (under seven years or seven years or more).[67] The adjustment period can be no more than monthly and cannot change over the life of the loan.

The 504/CDC Loan Guaranty Program[68]

The 504/CDC loan guaranty program uses Certified Development Companies (CDCs), which are private, nonprofit corporations established to contribute to economic development within their communities. Each CDC has its own geographic territory. The program provides long-term, fixed-rate loans for major fixed assets, such as land, structures, machinery, and equipment. Program loans cannot be used for working capital, inventory, or repaying debt. A commercial lender provides up to 50% of the financing package, which is secured by a senior lien. The CDC's loan of up to 40% is secured by a junior lien. The SBA backs the CDC with a guaranteed debenture.[69] The small business must contribute at least 10% as equity.

To participate in the program, small businesses cannot exceed $15 million in tangible net worth and cannot have average net income of more than $5 million for two full fiscal years before the date of application. Also, CDCs must intend to create or retain one job for every $75,000 of the debenture ($120,000 for small manufacturers) or meet an alternative job creation standard if they meet any one of 15 community or public policy goals.

Maximum 504/CDC participation in a single project is $5 million and $5.5 million for manufacturers and specified energy-related projects; the minimum is $25,000. There is no limit on the project size. Loan maturity is 10 years for equipment and 20 or 25 years for real estate. Unguaranteed financing may have a shorter term. The maximum fixed interest rate allowed is established when the debenture backing the loan is sold and is pegged to an increment above the current market rate for 5-year and 10-year U.S. Treasury issues.

The SBA is authorized to charge CDCs

- a one-time, up-front guaranty fee of up to 0.5% of the debenture (0.5% in FY2020),

[66] Colson Services Corp., "SBA Base Rates," New York, at https://colsonservices.bnymellon.com/news/sba-base-rates.jsp.

[67] The maximum variable interest rates allowed for 7(a) loans with a maturity less than seven years are the base rate plus 4.25% for loans less than $25,000; the base rate plus 3.25% for loans of $25,000-$50,000; and the base rate plus 2.25% for loans over $50,000. The maximum variable interest rates allowed for 7(a) loans with a maturity of seven years or longer are the base rate plus 4.75% for loans less than $25,000; the base rate plus 3.75% for loans of $25,000-$50,000; and the base rate plus 2.75% for loans over $50,000. See 13 C.F.R. §120.214 and 13 C.F.R. §120.215.

[68] For further information and analysis, see CRS Report R41184, *Small Business Administration 504/CDC Loan Guaranty Program*, by Robert Jay Dilger.

[69] A debenture is a bond that is not secured by a lien on specific collateral.

- an annual servicing fee of up to 0.9375% of the unpaid principal balance (0.3205% for regular 504/CDC loans and 0.322% for 504/CDC debt refinance loans in FY2020),
- a funding fee (not to exceed 0.25% of the debenture), an annual development company fee (0.125% of the debenture's outstanding principal balance), and
- a one-time participation fee (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).

In addition, CDCs are allowed to charge borrowers a processing (or packaging) fee of up to 1.5% of the net debenture proceeds and a closing fee, servicing fee, late fee, assumption fee, Central Servicing Agent (CSA) fee, other agent fees, and an underwriters' fee.

In FY2019, the SBA approved 6,099 504/CDC loans to 6,008 small businesses totaling nearly $5.0 billion.[70] In FY2019, 212 CDCs provided at least one 504/CDC loan.[71]

504/CDC Refinancing Program

During the Great Recession (2007-2009), Congress authorized the SBA to temporarily allow, under specified circumstances, the use of 504/CDC program funds to refinance existing commercial debt (e.g., not from SBA-guaranteed loans) for business expansion under the 504/CDC program.[72] In 2010, Congress authorized, for two years, the expansion of the types of projects eligible for refinancing of existing debt under the 504/CDC program to include projects not involving business expansion, provided the projects met specific criteria.[73] In the 114th Congress, Congress 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.[74] Specifically, each CDC is required to limit its refinancing so that, during any fiscal year, the new refinancing does not exceed 50% of the dollars it loaned under the 504/CDC program during the previous fiscal year.

[70] SBA, "SBA Lending Statistics for Major Programs (as of 9/30/2019)," at https://www.sba.gov/sites/default/files/2019-10/WebsiteReport_asof_20190930.pdf; and SBA, *FY2021 Congressional Budget Justification FY2019 Annual Performance Report*." pp. 31, 164.

[71] SBA, *FY2021 Congressional Budget Justification and FY2019 Annual Performance Report*, pp. 41, 166.

[72] P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA). 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.

[73] P.L. 111-240, the Small Business Jobs Act of 2010. A project that does not involve the expansion of a small business concern may include the refinancing of qualified debt if (I) the amount of the financing is not be more than 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; (II) the borrower has been in operation for all of the two-year period ending on the date of the loan; and (III) for a financing for which the Administrator determines there will be an additional cost attributable to the refinancing of the qualified debt, the borrower agrees to pay a fee in an amount equal to the anticipated additional cost.

[74] P.L. 114-113, the Consolidated Appropriations Act, 2016. For additional information and analysis, see CRS Report R41184, *Small Business Administration 504/CDC Loan Guaranty Program*, by Robert Jay Dilger.

This limitation may be waived if the SBA determines that the refinance loan is needed for good cause.

Commercial loans eligible for the 504/CDC Refinancing program being used to finance long-term fixed asset debt cannot have a loan-to-value (LTV) ratio of more than 90% of the fair market value of the eligible fixed asset(s) serving as collateral. Loans that are used to partly refinance eligible business operating expenses (e.g., salaries, rent, utilities) cannot exceed an LTV ratio of more than 85% of the fair market value of the collateral. The fees associated with the 504/CDC Refinancing program are the same as the 504/CDC Loan Guaranty program except the ongoing guaranty servicing fee may vary. In FY2020, the annual guaranty servicing fee is 0.3205% for regular 504/CDC loans and 0.322% for 504/CDC debt refinance loans.

In FY2019, the SBA approved 166 refinancing loans totaling $154.8 million.[75]

The Microloan Program[76]

The Microloan program provides direct loans to qualified nonprofit intermediary Microloan lenders that, in turn, provide "microloans" of up to $50,000 to small businesses and nonprofit child care centers. Microloan lenders also provide marketing, management, and technical assistance to Microloan borrowers and potential borrowers.

The program was authorized in 1991 as a five-year demonstration project and became operational in 1992. It was made permanent, subject to reauthorization, by P.L. 105-135, the Small Business Reauthorization Act of 1997. Although the program is open to all small businesses, it targets new and early stage businesses in underserved markets, including borrowers with little to no credit history, low-income borrowers, and women and minority entrepreneurs in both rural and urban areas who generally do not qualify for conventional loans or other, larger SBA guaranteed loans.

Microloans can be used for working capital and acquisition of materials, supplies, furniture, fixtures, and equipment. Loans cannot be made to acquire land or property. Loan terms are up to seven years.

The SBA charges intermediaries an interest rate that is based on the five-year Treasury rate, adjusted to the nearest one-eighth percent (called the Base Rate), less 1.25% if the intermediary maintains a historic portfolio of Microloans averaging more than $10,000 and less 2.0% if the intermediary maintains a historic portfolio of Microloans averaging $10,000 or less. The Base Rate, after adjustment, is called the Intermediary's Cost of Funds. The Intermediary's Cost of Funds is initially calculated one year from the date of the note and is reviewed annually and adjusted as necessary (called recasting). The interest rate cannot be less than zero.

On loans of more than $10,000, the maximum interest rate that can be charged to the borrower is the interest rate charged by the SBA on the loan to the intermediary, plus 7.75%. On loans of $10,000 or less, the maximum interest rate that can be charged to the borrower is the interest charged by the SBA on the loan to the intermediary, plus 8.5%. Rates are negotiated between the borrower and the intermediary and typically range from 7% to 9%.

[75] SBA, Office of Congressional and Legislative Affairs, "WDS Report Amount and Count Summary, September 30, 2019: DRAFT Table 2.7. Approvals by Program and Cohort," October 18, 2018. For historical data, see Table 3 in CRS Report R41184, *Small Business Administration 504/CDC Loan Guaranty Program*, by Robert Jay Dilger.

[76] For further information and analysis, see CRS Report R41057, *Small Business Administration Microloan Program*, by Robert Jay Dilger.

The SBA does not charge intermediaries up-front or ongoing service fees under the Microloan program.

In FY2019, 5,533 small businesses received a Microloan, totaling $81.5 million.[77] The average Microloan was $14,735 and the average interest rate was 7.5%.[78]

SBA Loan Enhancements to Address the Great Recession

Many of the proposals under consideration to address the capital needs of small businesses adversely affected by the COVID-19 pandemic were used to address the severe economic slowdown during and immediately following the Great Recession (2007-2009). The main difference is that given the unique nature of the COVID-19 pandemic's impact on households, especially physical distancing and the resulting decrease in consumer spending, there is an added emphasis today on SBA loan deferrals, loan forgiveness, and expanded eligibility, including, for the first time, specified types of nonprofit organizations.

During the 111th Congress, P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), provided the SBA an additional $730 million, including $375 million to temporarily subsidize the 7(a) and 504/CDC loan guaranty programs' fees ($299 million) and to temporarily increase the 7(a) program's maximum loan guaranty percentage to 90% ($76 million).[79] ARRA also included provisions designed to increase the amount of leverage issued under the SBA's Small Business Investment Company (SBIC venture capital) program.[80] SBICs provide loans and equity investments in small businesses.

ARRA's funding for the fee subsidies and 90% maximum loan guaranty percentage was about to be exhausted in November 2009, when Congress passed the first of six laws to provide additional funding to extend the loan subsidies and 90% maximum loan guaranty percentage.

- P.L. 111-118, the Department of Defense Appropriations Act, 2010, provided the SBA $125 million to continue the fee subsidies and 90% maximum loan guaranty percentage through February 28, 2010.
- P.L. 111-144, the Temporary Extension Act of 2010, provided the SBA $60 million to continue the fee subsidies and 90% maximum loan guaranty percentage through March 28, 2010.
- P.L. 111-150, an act to extend the Small Business Loan Guarantee Program, and for other purposes, provided the SBA authority to reprogram $40 million in previously appropriated funds to continue the fee subsidies and 90% maximum loan guaranty percentage through April 30, 2010.
- P.L. 111-157, the Continuing Extension Act of 2010, provided the SBA $80 million to continue the SBA's fee subsidies and 90% maximum loan guaranty percentage through May 31, 2010.
- P.L. 111-240, the Small Business Jobs Act of 2010, provided $505 million (plus an additional $5 million for administrative expenses) to continue the SBA's fee

[77] SBA, "Nationwide Microloan Report, October 1, 2018 through September 30, 2019," October 10, 2019.

[78] SBA, "Nationwide Microloan Report, October 1, 2018 through September 30, 2019," October 10, 2019.

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

[80] For additional information and analysis, see CRS Report R41456, *SBA Small Business Investment Company Program*, by Robert Jay Dilger.

subsidies and 90% maximum loan guaranty percentage from the act's date of enactment (September 27, 2010) through December 31, 2010.

- P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to use funds provided under the Small Business Jobs Act of 2010 to continue the SBA's fee subsidies and 90% maximum loan guaranty percentage through March 4, 2011, or until available funding is exhausted.

On January 3, 2011, the SBA announced that the fee subsidies and 90% maximum guarantee percentage ended because funding for these enhancements had been exhausted.[81]

In addition to providing additional funding for fee subsidies, P.L. 111-240, among other provisions

- increased the 7(a) program's gross loan limit from $2 million to $5 million;
- increased the 504/CDC Program's loan 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 eligibility for low-interest refinancing under the SBA's 504/CDC program for qualified debt;
- temporarily increased for one year the SBAExpress Program's loan limit from $350,000 to $1 million (expired on September 26, 2011);
- increased the Microloan Program's loan limit for borrowers from $35,000 to $50,000; and increased the loan limits for Microloan intermediaries after their first year in the program from $3.5 million to $5 million;
- authorized the U.S. Treasury to make up to $30 billion of capital investments for a Small Business Lending Fund ($4 billion was issued);[82]
- authorized to be appropriated $1.5 billion for the State Small Business Credit Initiative Program;[83]
- authorized a three-year Intermediary Lending Pilot Program to allow the SBA to make direct loans to not more than 20 eligible nonprofit lending intermediaries each year totaling not more than $20 million. The intermediaries, in turn, would be allowed to make loans to new or growing small businesses, not to exceed $200,000 per business;

[81] 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.

[82] For additional information and analysis, see CRS Report R42045, *The Small Business Lending Fund*, by Robert Jay Dilger.

[83] For additional information and analysis, see CRS Report R42581, *State Small Business Credit Initiative: Implementation and Funding Issues*, by Robert Jay Dilger.

- established an alternative size standard for the 7(a) and 504/CDC loan programs to enable more small businesses to qualify for assistance;[84] and
- provided small businesses with about $12 billion in tax relief.[85]

There were also efforts during the 111th and 112th Congresses to require the SBA to reinstate direct lending to small businesses.

During the 111th Congress

- H.R. 3854, the Small Business Financing and Investment Act of 2009, was passed by the House on October 29, 2009, by a vote of 389-32. It would have authorized a temporary SBA direct lending program.[86]

During the 112th Congress

- H.R. 3007, the Give Credit to Main Street Act of 2011, introduced on September 21, 2011, and referred to the House Committee on Small Business, would have authorized the SBA to provide direct loans to small businesses that have been in operation as a small business for at least two years prior to its application for a direct loan. The maximum loan amount would have been the lesser of 10% of the firm's annual revenues or $500,000.
- H.R. 5835, the Veterans Access to Capital Act of 2012, introduced on May 18, 2012, and referred to the House Committee on Small Business, would have authorized the SBA to provide up to 20% of the annual amount available for guaranteed loans under the 7(a) and 504/CDC loan guaranty programs, respectively, in direct loans to veteran-owned and -controlled small businesses.

Current Issues, Debates, and Lessons Learned

During the 111th Congress (2009-2010), there was a consensus in Congress that the federal government had to take decisive action to address the capital needs of small businesses, primarily as a means to promote job retention and creation. Similar sentiments are being expressed today as Congress considers proposals to assist small businesses adversely affected by the COVID-19 pandemic.

Many Members of Congress argued during the 111th Congress that the SBA should be provided additional resources to assist small businesses in acquiring capital necessary to start, continue, or

[84] P.L. 111-240, the Small Business Jobs Act of 2010, established the following interim alternative size standard for both the 7(a) and 504/CDC programs: 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.

[85] P.L. 111-240 raised the exclusion of gains on the sale or exchange of qualified small business stock from the federal income tax to 100%, with the full exclusion applying only to stock acquired the day after the date of enactment through the end of 2010; increased the deduction for qualified start-up expenditures from $5,000 to $10,000 in 2010, and raised the phaseout threshold from $50,000 to $60,000 for 2010; placed limitations on the penalty for failure to disclose reportable transactions based on resulting tax benefits; allowed general business credits of eligible small businesses for 2010 to be carried back five years; exempted general business credits of eligible small businesses in 2010 from the alternative minimum tax; allowed a temporary reduction in the recognition period for built-in gains tax; increased expensing limitations for 2010 and 2011 and allowed certain real property to be treated as Section 179 property; allowed additional first-year depreciation for 50% of the basis of certain qualified property; and removed cellular telephones and similar telecommunications equipment from listed property so their cost can be deducted or depreciated like other business property.

[86] H.R. 3854, the Small Business Financing and Investment Act of 2009 (111th Congress), §111. Capital Backstop Program.

expand operations with the expectation that in so doing small businesses will create jobs. Others worried about the long-term adverse economic effects of spending programs that increase the federal deficit. They advocated business tax reduction, reform of financial credit market regulation, and federal fiscal restraint as the best means to help small businesses further economic growth and job creation.

Given the coronavirus's widespread adverse economic impact, including productivity losses, supply chain disruptions, labor dislocation, and financial pressure on businesses and households, there has been relatively little concern expressed about federal fiscal restraint during the current pandemic. The debate has been primarily over which specific policies would have the greatest impact and which types of small businesses and small business owners should be helped the most.

As mentioned, many of the enhancements to the SBA's capital access programs that were made during the 111th Congress, such as increasing loan limits, providing fee subsidies, increasing loan guaranty percentages, and expanding eligibility criteria are being considered again. These changes had a demonstrated impact on small business lending during and immediately following the Great Recession. SBA lending increased. For example, the SBA's OIG found that SBA 7(a) loan approvals increased 39% and 504/CDC loan approval increased 73% from March to July 2009, largely due to ARRA's fee reductions and increased loan guarantee percentages. Lending volume remained below pre-recession levels, but was much higher than before the fee reductions and increase in the loan guarantee percentage were implemented.

The OIG also noted that the increased loan volume "may be impacting Agency staffing requirements and program risk.... Without adequate training and supervision, the increased demands on loan center staff could impact the quality of Agency loan reviews."[87]

Also, in 2012, the SBA issued a press release lauding P.L. 111-240's impact on SBA loan volume:

> With loan volume steadily increasing for the past six quarters, the U.S. Small Business Administration's loan programs posted the second largest dollar volume ever in FY 2012, supporting $30.25 billion in loans to small businesses. That amount was surpassed only by FY 2011, which was heavily boosted by the loan incentives under the Small Business Jobs Act of 2010.[88]

The data demonstrate that ARRA and the Small Business Jobs Act of 2010 helped small businesses access capital. However, because the SBA primarily gathers data on program output (e.g., loan volume, number of small businesses served, default rates) as opposed to program outcomes (e.g., small business solvency, job creation, wealth generation) it is difficult to know how effective these programs were in assisting small businesses or if other approaches might have produced better (or different) results.

Among the lessons learned from earlier small business stimulus packages is that additional funding for the SBA OIG to conduct oversight of the SBA's implementation of stimulus changes could help Congress in its oversight responsibilities. Additional funding for the SBA OIG to conduct investigations of potentially fraudulent behaviors by borrowers and lenders could also prove useful in deterring fraud, waste, and abuse.[89] In addition, requiring the SBA to periodically

[87] SBA, Office of Inspector General (OIG), *Review of the Recovery Act's Impact on SBA Lending*, ROM 10-02, November 25, 2009, p. 4, at https://www.sba.gov/document/report-rom-10-02-rom-10-02-review-recovery-acts-impact-sba-lending.

[88] SBA, "SBA Loan Dollars in FY 2012 Reach Second Largest Total Ever; $30.25 Billion Second Only to FY 2011," October 9, 2012, at https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-loan-dollars-fy-2012-reach-second-largest-total-ever-3025-billion-second-only-fy-2011.

[89] P.L. 116-136, the CARES Act, provided the SBA's OIG $25 million in additional funding for its oversight activities.

report to Congress and on its website both output and outcome performance data could help Congress in its oversight responsibilities and assure the public that the taxpayer's dollars are being spent both efficiently and effectively.

SBA Entrepreneurial Development Programs[90]

Overview

The SBA has provided technical and managerial assistance to small businesses since it began operations in 1953. Initially, the SBA provided its own small business management and technical assistance training programs. Over time, the SBA has relied increasingly on third parties to provide that training.

Congressional interest in the SBA's management and technical assistance training programs has increased in recent years, primarily because these programs are viewed as a means to assist small businesses create and retain jobs. The FY2020 budget appropriated $239 million, funding about 14,000 resource partners, including 63 lead small business development centers (SBDCs) and nearly 900 SBDC local outreach locations, 125 women's business centers (WBCs), and 350 chapters of the mentoring program, SCORE.[91]

The SBA reports that nearly a million aspiring entrepreneurs and small business owners receive mentoring and training from an SBA-supported resource partner each year. Most of this training is free, and some is offered at low cost.[92]

The Department of Commerce also provides management and technical assistance training for small businesses. For example, its Minority Business Development Agency provides training to minority business owners to assist them in obtaining contracts and financial awards.

Small Business Development Centers

SBDCs provide free or low-cost assistance to small businesses using programs customized to local conditions. SBDCs support small businesses in marketing and business strategy, finance, technology transfer, government contracting, management, manufacturing, engineering, sales, accounting, exporting, and other topics. SBDCs are funded by SBA grants and matching funds equal to the grant amount.

On April 3, 2020, the SBA's OIG issued its first CARES Act-related report, "White Paper: Risk Awareness and Lessons Learned from Prior Audits of Economic Stimulus Loans." For a list of the SBA OIG's oversight reports on SBA's credit and capital programs, including COVID-19-related relief programs, see https://www.sba.gov/document?sortBy=Effective%20Date&search=&documentType=Report&program=Credit/Capital&documentActivity=Audit/evaluation&office=7392&page=1.

[90] For additional information and analysis, see CRS Report R41352, *Small Business Management and Technical Assistance Training Programs*, by Robert Jay Dilger.

[91] Other SBA entrepreneurial development programs include the following: the Microloan Technical Assistance Program; the Program for Investment in Microentrepreneurs (PRIME), Veterans Programs (including Veterans Business Outreach Centers, Boots to Business, Veteran Women Igniting the Spirit of Entrepreneurship [VWISE], Entrepreneurship Bootcamp for Veterans with Disabilities, and Boots to Business: Reboot), the Native American Outreach Program, the Entrepreneurial Development Initiative (Regional Innovation Clusters), the Entrepreneurship Education Initiative, the Growth Accelerators Initiative, and the 7(j) Technical Assistance Program.

[92] SBA, *FY2021 Congressional Budget Justification and FY2019 Annual Performance Report*, p. 18.

SBDC funding is allocated on a pro rata basis among the states (including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa) by a statutory formula "based on the percentage of the population of each State, as compared to the population of the United States."[93] If, as is currently the case, SBDC funding exceeds $90 million, the minimum funding level is "the sum of $500,000, plus a percentage of $500,000 equal to the percentage amount by which the amount made available exceeds $90 million."[94]

There are 63 lead SBDC service centers, one located in each state (four in Texas and six in California), the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa. These centers manage more than 900 SBDC outreach locations. In FY2020, the SBA was provided $135 million for SBDC grants through the regular appropriations process and an additional $192 million in supplemental funding for SBDC grants in the CARES Act.[95]

In FY2019, SBDCs provided technical assistance training and counseling services to 254,821 unique SBDC clients, and 17,810 new businesses were started largely as a result of SBDC training and counseling.[96]

Microloan Technical Assistance

Congress authorized the SBA's Microloan lending program in 1991 (P.L. 102-140, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1992) to address the perceived disadvantages faced by women, low-income, veteran, and minority entrepreneurs and business owners gaining access to capital to start or expand their business. The program became operational in 1992. Initially, the SBA's Microloan program was authorized as a five-year demonstration project. It was made permanent, subject to reauthorization, by P.L. 105-135, the Small Business Reauthorization Act of 1997.

The SBA's Microloan Technical Assistance Program is affiliated with the SBA's Microloan lending program but receives a separate appropriation. This program provides grants to Microloan intermediaries for management and technical training assistance to Microloan program borrowers and prospective borrowers.[97] There are currently 144 active Microloan intermediaries serving 49 states, the District of Columbia, and Puerto Rico.[98]

Under the Microloan program, intermediaries are eligible to receive a Microloan technical assistance grant "of not more than 25% of the total outstanding balance of loans made to it."[99] Grant funds may be used only to provide marketing, management, and technical assistance to Microloan borrowers, and no more than 50% of the funds may be used to provide such assistance to prospective Microloan borrowers and no more than 50% of the funds may be awarded to third

[93] 15 U.S.C. §648(a)(4)(C).

[94] 15 U.S.C. §648(a)(4)(C) and P.L. 106-554, the Consolidated Appropriations Act, 2001.

[95] The CARES Act also provides $25 million for SBA resource partners, including SBDCs, to establish a centralized hub for COVID-19 information, which includes an online platform that consolidates resources and information across multiple federal agencies and training program to education resource partner counselors.

[96] SBA, *FY2021 Congressional Budget Justification and FY2019 Annual Performance Report*, p. 85.

[97] For further analysis of the SBA's Microloan program, see CRS Report R41057, *Small Business Administration Microloan Program*, by Robert Jay Dilger.

[98] SBA, *FY2021 Congressional Budget Justification and FY2019 Annual Performance Report*, p. 36. For a list of Microloan intermediaries by state, see SBA, "List of Lenders," at https://www.sba.gov/partners/lenders/microloan-program/list-lenders.

[99] 15 U.S.C. §636(m)(4)(A).

parties to provide that technical assistance. Grant funds also may be used to attend required training.[100]

In most instances, intermediaries must contribute, solely from nonfederal sources, an amount equal to 25% of the grant amount.[101] In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under nonfederal programs.[102]

The SBA does not require Microloan borrowers to participate in the Microloan Technical Assistance Program. However, intermediaries typically require Microloan borrowers to participate in the training program as a condition of the receipt of a microloan. Combining loan and intensive management and technical assistance training is one of the Microloan program's distinguishing features.[103]

The SBA was provided $34.5 million for Microloan Technical Assistance grants in FY2020.

Women's Business Centers

The WBC Renewable Grant Program was initially established by P.L. 100-533, the Women's Business Ownership Act of 1988, as the Women's Business Demonstration Pilot Program, targeting the needs of socially and economically disadvantaged women. The act directed the SBA to provide financial assistance to private, nonprofit organizations to conduct demonstration projects giving financial, management, and marketing assistance to small businesses, including start-up businesses, owned and controlled by women. The WBC program was expanded and provided permanent legislative status by P.L. 109-108, the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006.

Since the program's inception, the SBA has awarded WBCs a grant of up to $150,000 per year. WBC initial grants are currently awarded for up to five years, consisting of a base period of 12 months from the date of the award and four 12-month option periods.[104] The SBA determines if the option periods are exercised and makes that determination subject to the continuation of program authority, the availability of funds, and the recipient organization's compliance with federal law, SBA regulations, and the terms and conditions specified in a cooperative agreement.

[100] 13 C.F.R. §120.712.

[101] 13 C.F.R. §120.712.

[102] 13 C.F.R. §120.712. Intermediaries may not borrow their contribution.

[103] Intermediaries that make at least 25% of their loans to small businesses located in or owned by residents of an *Economically Distressed Area* (defined as having 40% or more of its residents with an annual income that is at or below the poverty level), or have a portfolio of loans made under the program that averages not more than $10,000 during the period of the intermediary's participation in the program are eligible to receive an additional training grant equal to 5% of the total outstanding balance of loans made to the intermediary. Intermediaries are not required to make a matching contribution as a condition of receiving these additional grant funds. See 13 C.F.R. §120.712; and 15 U.S.C. §636(m)(4)(C)(i).

[104] P.L. 105-135, the Small Business Reauthorization Act of 1997, authorized the SBA to award grants to WBCs for up to five years—one base year and four option years. P.L. 106-165, the Women's Business Centers Sustainability Act of 1999, provided WBCs that had completed the initial five-year grant an opportunity to apply for an additional five-year sustainability grant. Thus, the act allowed successful WBCs to receive SBA funding for a total of 10 years. Because the program has permitted permanent three-year funding intervals since 2007, the sustainability grants would be phased out by FY2012, leaving the initial five-year grants with the continuous three-year option. See SBA, *FY2012 Congressional Budget Justification and FY2010 Annual Performance Report*, p. 49, at https://www.sba.gov/sites/default/files/aboutsbaarticle/FINAL%20FY%202012%20CBJ%20FY%202010%20APR_0.pdf.

WBCs that successfully complete the initial five-year grant period may apply for an unlimited number of three-year funding intervals.[105]

During their initial five-year grant period, WBCs are required to provide a nonfederal match of one nonfederal dollar for each two federal dollars in years one and two (1:2), and one nonfederal dollar for each federal dollar in years three, four, and five (1:1). After the initial five-year grant period, the matching requirement in subsequent three-year funding intervals is not more than 50% of federal funding (1:1).[106] The nonfederal match may consist of cash, in-kind, and program income.[107]

Today, there are 125 WBCs located throughout most of the United States and the territories.[108] In FY2019, WBCs provided technical assistance training and counseling services to 64,527 unique WBC clients, and 2,087 new businesses were started largely as a result of WBC training and counseling.[109]

In FY2020, the SBA was provided $22.5 million for WBC grants in the regular appropriations process and an additional $48 million in supplemental funding for WBC grants in the CARES Act.[110]

SCORE (formerly the Service Corps of Retired Executives)

SCORE was established on October 5, 1964, by then-SBA Administrator Eugene P. Foley as a national, volunteer organization, uniting more than 50 independent nonprofit organizations into a single, national nonprofit organization.

The SBA currently provides grants to SCORE to provide in-person mentoring, online training, and "nearly 9,000 local training workshops annually" to small businesses.[111] SCORE's 350 chapters and more than 800 branch offices are located throughout the United States and partner with more than 10,000 volunteer counselors, who are working or retired business owners, executives and corporate leaders, to provide management and training assistance to small businesses "at no charge or at very low cost."[112]

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[105] P.L. 110-28, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, allowed WBCs that successfully completed the initial five-year grant to apply for an unlimited number of three-year funding renewals.

[106] P.L. 110-28 reduced the federal share to not more than 50% for all grant years (1:1) following the initial five-year grant.

[107] P.L. 105-135 specified that not more than one-half of the nonfederal sector matching assistance may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

[108] SBA, "Women's Business Centers Directory," at https://www.sba.gov/tools/local-assistance/wbc.

[109] SBA, *FY2021 Congressional Budget Justification and FY2019 Annual Performance Report*, p. 87.

[110] The CARES Act also provides $25 million for SBA resource partners, including WBCs, to establish a centralized hub for COVID-19 information, which includes an online platform that consolidates resources and information across multiple federal agencies and training program to education resource partner counselors.

[111] SBA, *FY2013 Congressional Budget Justification and FY2011 Annual Performance Report*, p. 45, at https://www.sba.gov/sites/default/files/files/1-508%20Compliant%20FY%202013%20CBJ%20FY%202011%20APR(1).pdf.

[112] SCORE (Service Corps of Retired Executives), "About SCORE," Washington, DC, at https://www.score.org/about-score.

In FY2019, SCORE provided technical assistance training and counseling services to 195,242 unique SCORE clients, and 480 new businesses were started largely as a result of SCORE training and counseling.[113]

In FY2020, the SBA was provided $11.7 million for SCORE grants.

Current Issues, Debates and Lessons Learned

Congress provided additional funding for SBA entrepreneurial development programs during and immediately following the Great Recession. For example, ARRA provided an additional $24 million for Microloan Technical Assistance grants. The Small Business Jobs Act of 2010 provided SBDCs an additional $50 million and temporarily waived SBDC, Microloan Technical Assistance, and WBC matching requirements.

Similar proposals have been made to address the COVID-19 pandemic. For example, S. 3518, the COVID-19 RELIEF for Small Businesses Act of 2020, as introduced, would provide an additional $150 million for SBA's entrepreneurial development programs, including $40 million for SBDCs, $18.75 for WBCs, $1 million to SCORE, and $50 million for Microloan Technical Assistance grants. The bill also would waive SBDC, Microloan Technical Assistance, and WBC grant matching requirements. The CARES Act appropriates $265 million for entrepreneurial development programs ($192 million for SBDCs, $48 million for WBCs, and $25 million for SBA resource partners to provide online information and training). The act also waives SBDC and WBC matching requirements.

Congress could require the SBA's resource partners to report to the SBA both output and outcome performance data for these grants and to require the SBA to report that information to Congress and make that information available to the public on the SBA website.

SBA Contracting Programs[114]

Overview

Federal agencies are required to facilitate the maximum participation of small businesses as prime contractors, subcontractors, and suppliers. For example, federal agencies are generally required to reserve contracts that have an anticipated value greater than the micro-purchase threshold (currently $10,000), but not greater than the simplified acquisition threshold (currently $250,000) exclusively for small businesses unless the contracting officer is unable to obtain offers from two or more small businesses that are competitive with market prices and the quality and delivery of the goods or services being purchased.[115]

Several SBA programs assist small businesses in obtaining and performing federal contracts and subcontracts. These include various prime contracting programs, subcontracting programs, and

[113] SBA, *FY2021 Congressional Budget Justification and FY2019 Annual Performance Report*, p. 89.

[114] For additional information and analysis concerning SBA contracting programs, see CRS Report R45576, *An Overview of Small Business Contracting*, by Robert Jay Dilger.

[115] 15 U.S.C. §644(j)(1). Certain regulations implementing this provision of the Small Business Act effectively narrows its scope. For example, certain small business contracts awarded or performed overseas are not necessarily required to be set aside for small businesses, and the small business provisions contained in Part 19 of the Federal Acquisition Regulation (FAR) generally do not apply to blanket purchase agreements and orders placed against Federal Supply Schedule contracts.

other assistance (e.g., contracting technical training assistance and oversight of the federal small business goaling program and the Surety Bond Guarantee program).[116]

8(a) Program[117]

The SBA's 8(a) Minority Small Business and Capital Ownership Development Program provides business development assistance to businesses owned and controlled by persons who are socially and economically disadvantaged, have good character, and demonstrate a potential for success.[118]

Although the 8(a) Program was originally established in the 1980s for the benefit of disadvantaged individuals, Congress expanded the program to include small businesses owned by four disadvantaged groups. Small businesses owned by Alaska Native Corporations (ANCs), Community Development Corporations (CDCs), Indian tribes, and Native Hawaiian Organizations (NHOs) are also eligible to participate in the 8(a) Program under somewhat different requirements.

Federal agencies are authorized to award contracts for goods or services, or to perform construction work, to the SBA for subcontracting to 8(a) firms. The SBA is authorized to delegate the function of executing contracts to the procuring agencies and often does so. Once the SBA has accepted a contract for the 8(a) Program, the contract is awarded through either a restricted competition limited to just 8(a) participants (a set aside) or on a sole source basis, with the contract amount generally determining the acquisition method used.

For individually owned small businesses, when the contract's anticipated total value, including any options, is less than $4 million ($7 million for manufacturing contracts), the contract is normally awarded without competition (as a sole source award). In contrast, when the contract's anticipated value exceeds these thresholds, the contract generally must be awarded via a set aside with competition limited to 8(a) firms so long as there is a reasonable expectation that at least two eligible and responsible 8(a) firms will submit offers and the award can be made at fair market price.[119]

Similar to other participants, firms owned by ANCs, CDCs, NHOs, and Indian tribes are eligible for 8(a) set asides and may receive sole source awards valued at less than $4 million ($7 million for manufacturing contracts). However, firms owned by ANCs and Indian tribes can also receive sole source awards in excess of $4 million ($7 million for manufacturing contracts) even when contracting officers reasonably expect that at least two eligible and responsible 8(a) firms will submit offers and the award can be made at fair market price.[120] NHO-owned firms may receive sole source awards from the Department of Defense under the same conditions.[121]

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[116] For additional information and analysis concerning the SBA's Surety Bond Program, see CRS Report R42037, *SBA Surety Bond Guarantee Program*, by Robert Jay Dilger.

[117] For additional information and analysis concerning the 8(a) Program, see CRS Report R44844, *SBA's "8(a) Program": Overview, History, and Current Issues*, by Robert Jay Dilger.

[118] Section 8(a) of the Small Business Act, P.L. 85-536, as amended, can be found at 15 U.S.C. §637(a). Regulations are in 13 C.F.R. §124.

[119] 15 U.S.C. §637(a)(1)(D)(ii); and SBA, "Conforming Statutory Amendments and Technical Corrections to Small Business Government Contracting Regulations," 83 *Federal Register* 12849, March 26, 2018.

[120] P.L. 100-656, §602(a), 102 Stat. 3887-88 (November 15, 1988) (codified at 15 U.S.C. §637 note); and 48 C.F.R. §19.805-1(b)(2).

[121] DOD's authority to make sole source awards to NHO-owned firms of contracts valued at more than $4 million ($7 million for manufacturing contracts) even if contracting officers reasonably expect that offers will be received from at least two responsible small businesses existed on a temporary basis in 2004-2006 and became permanent in 2006. See

The 8(a) program is designed to help federal agencies achieve their statutory goal of awarding at least 5% of their federal contracting dollars to small disadvantaged businesses.

In FY2019, the federal government awarded $30.3 billion to 8(a) firms.

Historically Underutilized Business Zone Program[122]

The SBA oversees the Historically Underutilized Business Zones (HUBZones) Program. The program assists small businesses located in HUBZone-designated areas through set asides, sole source awards (so long as the award can be made at a fair and reasonable price, and the anticipated total value of the contract, including any options, is below $4 million, or $7 million for manufacturing contracts) and price evaluation preferences (of up to 10%) in full and open competitions.[123] The HUBZone program targets assistance to small businesses located in areas with low income, high poverty, or high unemployment.[124] To be certified as a HUBZone small business, at least 35% of the small business's employees must generally reside in a HUBZone.

The HUBZone contracting program is designed to help federal agencies achieve their statutory goal of awarding at least 3% of their federal contracting dollars to HUBZone small businesses.

In FY2019, the federal government awarded $10.8 billion to HUBZone-certified small businesses.

Service-Disabled Veteran-Owned Small Business Program

The SBA oversees the Service-Disabled Veteran-Owned Small Business (SDVOSB) Program. The program allows agencies to set aside contracts for SDVOSBs. Federal agencies may award sole source contracts to SDVOSBs so long as the award can be made at a fair and reasonable price, and the anticipated total value of the contract, including any options, is below $4 million ($6.5 million for manufacturing contracts).[125] For purposes of this program, veterans with service-related disabilities are defined as they are under the statutes governing veterans affairs.[126]

The SDVOSB contracting program is designed to help federal agencies achieve their statutory goal of awarding at least 3% of their federal contracting dollars to SDVOSBs.

In FY2019, the federal government awarded $23.5 billion to SDVOSBs.

P.L. 109-148, Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006, §8020, 119 Stat. 2702-03 (December 30, 2005); 48 C.F.R. §219.805-1(b)(2)(A)-(B).

[122] For additional information and analysis, see CRS Report R41268, *Small Business Administration HUBZone Program*, by Robert Jay Dilger.

[123] 15 U.S.C. §657a(b)(2-3); and SBA, "Conforming Statutory Amendments and Technical Corrections to Small Business Government Contracting Regulations," 83 *Federal Register* 12849, March 26, 2018.

[124] For specific criteria, see 15 U.S.C. §632(p)(4); and 13 C.F.R. §126.103.

[125] 15 U.S.C. §657f(a-b); and SBA, "Conforming Statutory Amendments and Technical Corrections to Small Business Government Contracting Regulations," 83 *Federal Register* 12849, March 26, 2018.

[126] 38 U.S.C. §8127(f). Veteran-owned small businesses and service-disabled veteran-owned small businesses are eligible for separate preferences in procurements conducted by the Department of Veterans Affairs under the authority of P.L. 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, as amended by P.L. 110-389, the Veterans' Benefits Improvements Act of 2008.

Women-Owned Small Business Program

The SBA oversees the Women-Owned Small Businesses (WOSB) Program. Under this program, federal contracting officers may set aside federal contracts (or orders) for WOSBs and Economically Disadvantaged Women-Owned Small Businesses (EDWOSBs) in industries in which the SBA determines WOSBs are substantially underrepresented in federal procurement. Federal contracting officers can also set aside federal contracts for EDWOSBs exclusively in industries in which the SBA determines WOSBs are underrepresented in federal procurement.

The WOSB Program is designed to help federal agencies achieve their statutory goal of awarding at least 5% of their federal contracting dollars to WOSBs.

Federal agencies may award sole source contracts to WOSBs so long as the award can be made at a fair and reasonable price, and the anticipated total value of the contract, including any options, is below $4 million ($6.5 million for manufacturing contracts).[127]

In FY2019, the federal government awarded $25.0 billion to WOSBs.

SBA Surety Bond Program[128]

The SBA's Surety Bond Guarantee Program has been operational since April 1971.[129] It is designed to increase small business' access to federal, state, and local government contracting, as well as private sector contracting, by guaranteeing bid, performance, payment, and specified ancillary bonds "on contracts … for small and emerging contractors who cannot obtain bonding through regular commercial channels."[130] The program guarantees individual contracts of up to $6.5 million, and up to $10 million for federal contracts if a federal contracting officer certifies that such a guarantee is necessary. The $6.5 million limit is periodically adjusted for inflation.[131] The SBA's guarantee currently ranges from 80% to 90% of the surety's loss if a default occurs.

In FY2019, the SBA guaranteed 9,905 bid and final surety bonds (a payment bond, performance bond, or both a payment and performance bond) with a total contract value of nearly $6.5 billion.[132]

A surety bond is a three-party instrument between a surety (who agrees to be responsible for the debt or obligation of another), a contractor, and a project owner. The agreement binds the

[127] 15 U.S.C. §637(m); and SBA, "Conforming Statutory Amendments and Technical Corrections to Small Business Government Contracting Regulations," 83 *Federal Register* 12849, March 26, 2018.

[128] For additional information and analysis concerning the SBA's Surety Bond Program, see CRS Report R42037, *SBA Surety Bond Guarantee Program*, by Robert Jay Dilger.

[129] P.L. 91-609, the Housing and Urban Development Act of 1970; and U.S. Congress, Senate Committee on Banking, Housing, and Urban Affairs, *Small Business Legislation - 1974*, hearing on S. 3137 and S. 3138, 93rd Cong., 2nd sess., March 13, 1974 (Washington, DC: GPO, 1974), p. 19.

[130] SBA, "FY2016 Congressional Budget Justification and FY2014 Annual Performance Report," p. 44, at https://www.sba.gov/sites/default/files/1-FY%202016%20CBJ%20FY%202014%20APR.PDF. An ancillary bond, which ensures that requirements integral to the contract, but not directly performance related, are performed, is eligible if it is incidental and essential to a contract for which SBA has guaranteed a final bond. A reclamation bond is eligible if it is issued to reclaim an abandoned mine site and for a project undertaken for a specific period of time.

[131] P.L. 112-239, the National Defense Authorization Act for Fiscal Year 2013, increased the program's guarantee limit from $2.0 million to $6.5 million, and up to $10 million for a federal contract if certified. The act also includes a provision to increase the $6.5 million limit periodically for inflation "by striking 'does not exceed' and all that follows through the period at the end, and inserting 'does not exceed $6,500,000,' as adjusted for inflation in accordance with Section 1908 of title 41, United States Code." That section of the *U.S. Code* provides for an inflation adjustment on October 1 of each year evenly divisible by five.

[132] SBA, Office of Congressional and Legislative Affairs, correspondence with the author, January 14, 2020.

contractor to comply with the contract's terms and conditions. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. Surety bonds encourage project owners to contract with small businesses that may not have the credit history or prior experience of larger businesses and may be at greater risk of failing to comply with the contract's terms and conditions.

Surety bonds are important to small businesses interested in competing for federal contracts because the federal government requires prime contractors—prior to the award of a federal contract exceeding $150,000 for the construction, alteration, or repair of any building or public work of the United States—to furnish a performance bond issued by a surety satisfactory to the contracting officer in an amount that the officer considers adequate to protect the government.

Current Issues, Debates and Lessons Learned

Congress included enhancements for small business contracting in both ARRA (increased funding and higher maximum bond amounts for the SBA Surety Bond program) and the Small Business Jobs Act of 2010 (new restrictions on the consolidation or bundling of contracts that make it more difficult for small businesses to be awarded the contract). The CARES Act authorizes federal agencies to modify a contract's terms and conditions to reimburse contractors—at the minimum billing rate not to exceed an average of 40 hours per week—for any paid leave (including sick leave) the contractor provides to keep its employees or subcontractors in a ready state through September 30, 2020. Eligible contractors are those whose employees or subcontractors cannot perform work on a federally-approved site due to facility closures or other restrictions because of COVID-19 and cannot telework because their job duties cannot be performed remotely.

Concluding Observations

In response to the Great Recession, Congress took a number of actions to enhance small businesses' access to capital, management and training programs, and contracting opportunities. The goal then, as it is now, was to provide small businesses with the resources necessary to survive the economic downturn and retain or create jobs. Some of the CARES Act's provisions (e.g., fee waivers, increased loan limits, and increased guarantee percentages) were used in legislation passed during the 111th Congress to address the severe economic slowdown during and immediately following the Great Recession (2007-2009). The main difference between that legislation and the CARES Act is that the CARES Act includes loan deferrals, loan forgiveness, and greatly expanded eligibility, including, for the first time, specified types of nonprofit organizations.

The CARES Act's inclusion of loan deferral and forgiveness is, at least partly, due to the unique economic dislocations and reduction in consumer spending resulting from individuals and households engaging in physical distancing to avoid COVID-19 infection.

As mentioned, because COVID-19's adverse economic impact is so widespread, including productivity losses, supply chain disruptions, labor dislocation, and financial pressure on businesses and households, there has been relatively little concern expressed about federal fiscal restraint during the current pandemic. The debate has been primarily over which specific policies would have the greatest impact and which types of small businesses and small business owners should be helped the most.

Among the lessons learned from the 111th Congress is the potential benefits that can be derived from providing additional funding for the SBA's Office of Inspector General and the Government Accountability Office. GAO and the SBA's OIG can provide Congress information that could

prove useful as Congress engages in congressional oversight of the SBA's administration of the CARES Act, provide an early warning if unforeseen administrative problems should arise, and, through investigations and audits, serve as a deterrent to fraud.

Requiring the SBA to report regularly on its implementation of the CARES Act could also promote transparency and assist Congress in performing its oversight responsibilities. In addition, requiring output and outcome performance measures and requiring the SBA to report this information directly to both Congress and the public by posting that information on the SBA's website could enhance both congressional oversight and public confidence in the SBA's efforts to assist small businesses.

Appendix. Major Provisions of the CARES Act, the Paycheck Protection Program and Health Care Enhancement Act, the Paycheck Protection Program Flexibility Act, the HEROES Act, and the Continuing Small Business Recovery and Paycheck Protection Program Act

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136)

- established a Paycheck Protection Program (PPP) to provide "covered loans" with a 100% SBA loan guarantee, a maximum term of 10 years, and an interest rate not to exceed 4% to assist small businesses and other organizations adversely affected by the Coronavirus Disease 2019 (COVID-19). The SBA announced that PPP loans will have a two-year term at a 1.0% interest rate;
- defines a covered loan as a loan made to an eligible recipient from February 15, 2020, through June 30, 2020;
- waives the up-front loan guarantee fee and annual servicing fee, the no credit elsewhere requirement, and the requirements for collateral and a personal guarantee for a covered loan;
- expands eligibility for a covered loan to include 7(a) eligible businesses and any business, 501(c)(3) nonprofit organization, 501(c)(19) veteran's organization, or tribal business not currently eligible that has not more than 500 employees or, if applicable, the SBA's size standard in number of employees for the industry in which they operate. Sole proprietors, independent contractors, and eligible self-employed individuals are also eligible to receive a covered loan;[133]
- increases the maximum loan amount for a covered loan to the lesser of (1) 2.5 times the average total monthly payments by the applicant for payroll costs incurred during the one-year period before the date on which the loan is made plus the outstanding balance of any 7(a) loan (made on or after January 31, 2020) that is refinanced as part of a covered loan, or (2) $10 million;
- allows borrowers to refinance 7(a) loans (made on or after January 31, 2020) as part of a covered loan;
- specifies that covered loans are nonrecourse (meaning that the SBA cannot pursue collections actions against the recipient(s) in the case of nonpayment)

[133] For purposes of determining not more than 500 employees, the term employee includes individuals employed on a full-time, part-time, or other basis. Also, special eligibility considerations are provided for certain businesses and organizations. For example, businesses operating in NAICS Sector 72 (Accommodation and Food Services industry) that employ not more than 500 employees per physical location are also eligible for a covered loan. Affiliation rules are also waived for: (1) NAICS Sector 72 businesses, (2) franchises, and (3) SBIC-owned businesses. In other words, these businesses would not be denied a covered loan solely because they employ more than 500 employees across multiple businesses under common ownership.

except to the extent that the covered loan proceeds are used for nonauthorized purposes;

- allows covered loans to be used for payroll costs, costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums, employee salaries, commissions, or similar compensations, mortgage payments, rent, utilities, and interest on any other debt obligations that were incurred before the covered period;
- expands lender delegated loan approval authority for making covered loans to all 7(a) lenders to expedite PPP loan processing;
- requires lenders, when evaluating borrower eligibility for a covered loan, to consider whether the borrower was in operation on February 15, 2020, had employees for whom the borrower paid salaries and payroll taxes, and paid independent contractors;
- requires borrowers to, among other acknowledgements,
  - make a good faith certification that the covered loan is needed because of the uncertainty of current economic conditions and to support ongoing operations, and
  - acknowledge that the funds will be used to retain workers, maintain payroll, or make mortgage payments, lease payments, and utility payments;
- requires lenders to provide "impacted borrowers" adversely affected by COVID-19 "complete payment deferment relief"[134] on a covered PPP loan for not less than six months and not more than one year if the borrower was in operation on February 15, 2020, and has an application for a covered loan approved or pending approval on or after the date of enactment. The SBA announced that covered loan payments will be deferred for six months. However, interest will continue to accrue on these loans during the six-month deferment;[135]
- presumes that each eligible recipient that applies for a PPP loan is an impacted borrower and authorizes the SBA Administrator to purchase covered loans sold on the secondary market so that affected borrowers may receive a deferral for not more than one year. The SBA has announced that the deferment relief on covered loans will be for six months;
- provides for the forgiveness of covered loan amounts equal to the amount the borrower spent during an 8-week period after the loan's origination date on payroll costs, interest payment on any mortgage incurred prior to February 15, 2020, payment of rent on any lease in force prior to February 15, 2020, and payment on any utility for which service began before February 15, 2020. The amount of loan forgiveness cannot exceed the covered loan's principal amount. The forgiveness is reduced proportionally by formulas related to the borrower's retention of full-time equivalent employees compared to the borrower's choice of either (1) the period beginning on February 15, 2019, and ending on June 30, 2019, or (2) January 1, 2020, and February 29, 2020; and by the amount of any reduction in pay of any employee beyond 25% of their salary or wages during the

[134] According to the bill text, "complete deferment relief" includes payment of principal, interest, and fees.

[135] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program," 85 *Federal Register* 20813, April 15, 2020.

most recent full quarter before the covered period.[136] Borrowers that re-hire workers previously laid off will not be penalized for having a reduced payroll at the beginning of the period. Cancelled debt resulting from loan forgiveness would not be included in the borrower's taxable federal income;

- The SBA has announced that due to likely high subscription, at least 75% of the forgiven loan amount must have been used for payroll;[137]
- requires the SBA to pay the principal, interest, and any associated fees that are owed on an existing 7(a), 504/CDC, or Microloan that is in a regular servicing status for a six-month period starting on the next payment due. Loans that are already on deferment will receive six months of payment by the SBA beginning with the first payment after the deferral period. Loans made up until six months after enactment will also receive a full six months of SBA loan payments;
- requires federal banking agencies or the National Credit Union Administration Board applying capital requirements under their respective risk-based capital requirements to provide a covered loan with a 0%-risk weight;
- increases the SBA's lending authorization under Section 7(a) of the Small Business Act from $30 billion to $349 billion during the covered period;
- increases the SBAExpress loan limit from $350,000 to $1 million (reverts to $350,000 on January 1, 2021);
- permanently eliminates the zero subsidy requirement to waive SBAExpress loan fees for veterans;
- appropriates $349 billion for loan guarantees and subsidies (remaining available through FY2021), $675 million for the SBA's salaries and expenses account, $25 million for the SBA's Office of Inspector General (OIG), $562 million for disaster loans, $265 million for entrepreneurial development programs ($192 million for SBDCs, $48 million for WBCs, and $25 million for SBA resource partners to provide online information and training), $17 billion for subsidies for certain loan payments, and $10 million for the Department of Commerce's Minority Business Development Agency;
- allows the period of use of FY2018 and FY2019 grant awards made under the State Trade Expansion Program (STEP) through FY2021;
- reimburses (up to the grant amount received) STEP award recipients for financial losses relating to a foreign trade mission or a trade show exhibition that was cancelled solely due to a public health emergency declared due to COVID-19;
- waives SBDC and WBC matching requirements;
- requires federal agencies to continue to pay small business contractors and revise delivery schedules, holding small contractors harmless for being unable to perform a contract due to COVID-19 caused interruptions until September 2021;
- requires federal agencies to promptly pay small business prime contractors and requires prime contractors to promptly pay small business subcontractors within 15 days, notwithstanding any other provision of law or regulation, for the

[136] For the purposes of the reduction formula, reductions in employees with wages or salary at an annualized rate of pay more than $100,000 are not taken into account. Businesses may also receive forgiveness amounts for additional wages paid to tipped employees.

[137] SBA, "Business Loan Program Temporary Changes; Paycheck Protection Program," 85 *Federal Register* 20813-20814, April 15, 2020.

duration of the President invoking the Defense Production Act in response to COVID-19; and

- provides SBA Emergency Injury Disaster Loan (EIDL) enhancements during the covered period of January 31, 2020, through December 31, 2020, including
  - expanding eligibility beyond currently eligible small businesses, private nonprofit organizations, and small agricultural cooperatives, to include startups, cooperatives, and eligible ESOPs (employee stock ownership plans) with not more than 500 employees, sole proprietors, and independent contractors;
  - authorizing the SBA Administrator, in response to economic injuries caused by COVID-19, to
    - waive the no credit available elsewhere requirement,
    - approve an applicant based solely on their credit score,
    - not require applicants to submit a tax return or tax return transcript for approval,
    - waive any rules related to the personal guarantee on advances and loans of not more than $200,000,
    - waive the requirement that the applicant needs to be in business for the one-year period before the disaster declaration, except that no waiver may be made for a business that was not in operation on January 31, 2020;
  - authorizing the SBA Administrator, through December 31, 2020, to provide up to $10,000 as an advance payment in the amount requested within three days after receiving an EIDL application from an eligible entity. Applicants are not required to repay the advance payment, even if subsequently denied an EIDL loan. The funds may be used for any eligible EIDL expense, including, among other expenses, providing paid sick leave to employees unable to work due to COVID-19, maintaining payroll to retain employees, and meeting increased costs to obtain materials due to supply chain disruptions. The SBA limited EIDL-advance payments to $1,000 per employee, up to a maximum of $10,000; and
  - appropriating an additional $10 billion for EIDL assistance.

The Paycheck Protection Program and Health Care Enhancement Act (P.L. 116-139)

- increases the SBA's lending authorization under Section 7(a) of the Small Business Act from $349 billion during the covered period to $659 billion;
- requires that no less than $30 billion of this authorization amount be set aside for loans issued by insured depository institutions and credit unions with consolidated assets of $10 billion to $50 billion;
- requires that no less than $30 billion of this authorization amount be set aside for loans issued by community financial institutions (including community development financial institutions (CDFIs), minority depository institutions, SBA-certified development companies, and SBA microloan intermediaries), and

insured depository institutions and credit unions with consolidated assets less than $10 billion;

- increases the PPP appropriation amount from $349 billion to $670.335 billion;
- appropriates an additional $50 billion for EIDL loans;
- appropriates an additional $10 billion for Emergency EIDL grants;
- appropriates an additional $2.1 billion for the SBA's salaries and expenses account (to remain available until September 30, 2021); and
- provides agricultural enterprises eligibility for Emergency EIDL grants and EIDL loans during the covered period (January 31, 2020 through December 31, 2020).

The Paycheck Protection Program Flexibility Act (P.L. 116-142)

- extends the PPP loan forgiveness covered period from 8 weeks after the loan's origination date to the earlier of 24 weeks after the loan's origination date or December 31, 2020;
- provides borrowers that received a PPP loan prior to the enactment date (June 5, 2020) the option to use the CARES Act's loan forgiveness covered period of eight weeks after the loan's origination date;
- replaces the 75%/25% rule on the use of PPP loan proceeds for loan forgiveness purposes with the requirement that at least 60% of the loan proceeds be used for payroll costs and up to 40% be used for covered mortgage interest, rent, and utility payments;[138]
- provides borrowers a "safe harbor" from the loan forgiveness rehiring requirement if the borrower is unable to rehire an individual who was an employee of the recipient on or before February 15, 2020, or if the borrower can demonstrate an inability to hire similarly qualified employees on or before December 31, 2020;
- establishes a minimum PPP loan maturity of five years for loans made on or after the date of enactment;
- extends the PPP loan deferral period from six months (under SBA regulations) to the date that the SBA remits the borrower's loan forgiveness amount to the lender or, if the borrower does not apply for loan forgiveness, 10 months after the end of the borrower's loan forgiveness covered period; and
- eliminates the exception in the CARES Act preventing taxpayers who receive PPP loan forgiveness from delaying the payment of employer payroll taxes.[139]

[138] If a borrower uses less than 60% of the PPP loan amount for payroll costs during the forgiveness covered period, the borrower will continue to be eligible for partial loan forgiveness, subject to at least 60% of the loan forgiveness amount having been used for payroll costs.

[139] See FAQs 3 and 4 in IRS, "Deferral of Employment Tax Deposits and Payments Through December 31, 2020," at https://www.irs.gov/newsroom/deferral-of-employment-tax-deposits-and-payments-through-december-31-2020.

The Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act; H.R. 6800)

H.R. 6800, would, among other provisions

- expand the PPP loan covered period from June 30, 2020, to December 31, 2020;
- extend PPP eligibility to all 501(c) nonprofit organizations of all sizes;
- establish a minimum PPP loan maturity of five years;
- require, as of the date of enactment, that 25% of existing PPP funds be issued to small businesses with 10 or fewer employees; 25% of existing funds be issued to nonprofit organizations, with at least half of this amount going to nonprofit organizations with not more than 500 employees; and the lesser of 25% of existing PPP funds or $10 billion be issued to community financial institutions, such as Community Development Financial Institutions (CDFIs), SBA microloan intermediaries, and SBA-certified development companies;
- establish technical assistance grants for small community financial institutions with assets of less than $10 billion;
- bifurcate the SBA's lending authority for the 7(a) and PPP programs;
- increase the SBA's 7(a) loan authorization amount from $30 billion to $75 billion for FY2020;
- provide SCORE and veterans business outreach centers eligibility for $10 million each from the CARES Act's $265 million entrepreneurial development resource partners grant program;
- amend the PPP loan forgiveness by extending the 8-week period to the earlier of 24 weeks or December 31, 2020, mandate loan forgiveness data collection and reporting, and eliminate the 75%/25% rule on the use of loan proceeds;
- provide borrowers a "safe harbor" from the loan forgiveness rehiring requirement if the borrower is unable to rehire an individual who was an employee of the recipient on or before February 15, 2020, or if the borrower can demonstrate an inability to hire similarly qualified employees on or before December 31, 2020;
- allow certain previously incarcerated individuals to be approved for PPP and SBA disaster loans;
- temporarily increase, for FY2020, the 7(a) loan program guaranty from up to 75% for loans with an outstanding loan balance exceeding $150,000, and 85% for loans with an outstanding loan balance of $150,000 or less, to 90% of the outstanding loan balance;
- temporarily increase, through December 31, 2020, the SBAExpress loan guaranty from not more than 50% of the outstanding loan balance to not more than 90% of the outstanding loan balance on loans up to $350,000, and not more than 75% of the outstanding loan balance on loans greater than $350,000;
- temporarily reduce, for FY2020, 7(a) and 504/CDC fees to the maximum extent possible given available appropriations; temporarily increase, for FY2020, the maximum 7(a) loan amount from $5 million to $10 million and the maximum 504/CDC loan amount from $5.5 million to $10 million; and permanently increase the 504/CDC maximum loan amount for small manufacturers from $5.5 million to $10 million;

- eliminate the exception in the CARES Act preventing taxpayers who receive PPP loan forgiveness from delaying the payment of employer payroll taxes;
- authorize, for each of FY2021-FY2025, $80 million for Microloan technical assistance grants and $110 million for Microloan; and authorize to be appropriated during FY2020, to remain available until expended, $50 million for Microloan technical assistance grants and $7 million for Microloans;
- appropriate $500 million for fee reductions and guaranty and maximum loan amount increases; and
- appropriate $10 billion for Emergency EIDL grants.

The Continuing Small Business Recovery and Paycheck Protection Program Act (S. 4321)

S. 4321 would, among other provisions

- extend the PPP loan covered period from August 8, 2020, to December 31, 2020, and reduce the maximum PPP loan amount from $10 million to $2 million;
- expand PPP forgivable expenses to include covered operations expenditures (e.g., software, cloud computing, and other human resources and accounting needs), property damages due to public disturbances that occurred during 2020 (not covered by insurance or other compensation), covered supplier costs essential to the recipient's current operations, and covered worker protection expenditures to comply with federal health and safety guidelines related to COVID-19;
- allow borrowers to select a preferred 8-week period after the loan's origination date through December 31, 2020, for determining loan forgiveness;
- create simplified loan forgiveness application processes for loans under $150,000 and for loans between $150,000 and $2 million. The SBA would retain the right to review and audit these loans for fraud. Reporting of demographic information would be optional;
- expand eligibility to include certain 501(c)(6) organizations, including Chambers of Commerce and Destination Marketing Organizations, that have 300 or fewer employees, do not receive more than 10% of their receipts from lobbying, and whose lobbying activities do not comprise more than 10% of their total activities. Recipients cannot use any loan proceeds for lobbying activities;
- allow second PPP "draw" loans through December 31, 2020, for PPP borrowers that meet the SBA's revenue standard, if applicable, have not more than 300 employees, and can demonstrate at least a 50% reduction in gross receipts in the first or second quarter of 2020 relative to the same 2019 quarter. Several types of PPP eligible entities, such as publicly traded companies, would be ineligible for a second loan. The maximum loan size would equal 2.5 times average monthly payroll costs, up to $2 million (not more than $10 million in the aggregate). Full loan forgiveness would be based on a 60/40 cost allocation between payroll and eligible non-payroll costs;
- establish a specific loan calculation for farmers and ranchers who operate as a sole proprietor, independent contractor, or self-employed individual and allow Farm Credit System Institutions to make PPP loans;

- increase the PPP authorization amount from $659 billion to $749 billion, rescind $100 billion from the SBA's business loan program account, and appropriate an additional $190 billion for the cost of PPP and PPP second draw loans. In funding, $25 billion would be set-aside for entities employing 10 or fewer employees and $10 billion would be set-aside for community lenders;
- appropriate $57.7 billion to support up to $100 billion in lending for a new 7(a) Recovery Sector Loan program for seasonal businesses and businesses located in low-income census tracts that meet specified size standards (e.g., one of the requirements is that seasonal businesses have no more than 250 employees and non-seasonable businesses have no more than 500 employees) and can demonstrate at least a 50% reduction in gross revenue in the first or second quarter of 2020 relative to the same 2019 quarter. Loans would be up to twice the borrower's annual revenue, capped at $10 million, have a maturity of up to 20 years, and a subsidized interest rate charged to the borrower of 1%. The SBA would provide lenders a 100% loan guarantee, the credit elsewhere requirement and SBA fees would be waived, and principal and interest payments would be deferred for the first two years of the loan. The SBA would be authorized to grant an additional two years of deferment. Loan proceeds could be used for working capital, acquisition of fixed assets, and refinancing existing indebtedness. The loans would be available through December 31, 2020.
- appropriate $10 billion for a new Small Business Growth and Domestic Production Investment Facility under the SBA's Small Business Investment Company (SBIC) program to provide funds to firms that invest in businesses which meet the revenue loss requirements for PPP, are a manufacturing business, or are located in a small business low-income census tract, as defined in this act. At least 50% of the investments by the participating investment company must be in eligible small businesses. The program's goals are to "improve the recovery of eligible small business concerns from the COVID-19 pandemic, increase resiliency in the manufacturing supply chain of eligible small business concerns, and increase the economic development of small business low-income census tracts." The SBA would purchase bonds that include equity features from a participating SBIC with a term of at least 15 years and an interest rate of up to 2%. The SBA would be authorized to directly commit or commit to purchase bonds from an SBIC of an amount up to the lesser of twice the SBIC's regulatory capital or $200 million. The SBA would receive a share of any profits and the SBA's share would be deposited into a fund and made available for additional commitments.

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