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SMALL BUSINESS JOB CREATION AND ACCESS TO CAPITAL ACT OF 2009

SEPTEMBER 29, 2010.—Ordered to be printed

Ms. LANDRIEU, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 2869]

On December 17, 2009, the Senate Committee on Small Business and Entrepreneurship (“the Committee”) reported, on a vote of 17–1, S. 2869, the “Small Business Job Creation and Access to Capital Act of 2009,” a bill to increase loan limits for small business concerns; to provide for low interest refinancing for small business concerns; and for other purposes. Having considered S. 2869, the Committee reports favorably thereon with an amendment and recommends that the bill (as amended) pass.

I. INTRODUCTION

The Small Business Job Creation and Access to Capital Act of 2009 (S. 2869) is a bill to permanently increase SBA loan limits, to provide for low interest refinancing for small businesses for a two-year period after enactment, and for other purposes.

This bipartisan bill, reported out of Committee by a vote of 17–1, was introduced by Senator Landrieu on December 10, 2009. In accordance with Senate procedure, original bills reported from a Committee may only be introduced by one Senator. Members of the Committee wishing to cosponsor the bill include: Senators Snowe, Kerry, Shaheen, Lieberman, Levin, Pryor, Bayh, Isakson, Cardin, and Cantwell. Other Senators cosponsoring the bill include: Senators Bennet, Bingaman, Boxer, Burris, Casey, Dorgan, Feinstein, Johanns, Johnson, Klobuchar, Lincoln, McCaskill, Merkley, Murray, Specter, Stabenow and Udall. In total, 27 Senators cosponsored the bill.

During the markup of the bill, the Committee adopted a Manager's Amendment that included a modified amendment submitted by Senator Levin and a modified amendment submitted by Senator Thune. The vote on the Manager's amendment was adopted as part of the en bloc vote on the amendment and final passage of the bill. The en bloc vote was 17–1, with one member absent.

As the name implies, the Small Business Job Creation and Access to Capital Act of 2009 is targeted towards increasing small business access to capital. In preparing to introduce this legislation, the Committee held a series of hearings, meetings and roundtables analyzing the SBA's loan programs and heard from small businesses and small business lenders on increasing the maximum loan sizes on 7(a), 504 and microloans.

On October 1, 2009, the Committee held a roundtable on the "Reauthorization of SBA Finance Programs and the Impact of the Small Business Provisions in the Recovery Act." The Committee addressed issues regarding the Small Business Administration ("SBA") finance programs, the status of SBA provisions in the Recovery Act and what steps the Committee should take to ensure that small businesses have access to affordable capital. Increasing loan limits and enhancing the ability to refinance existing qualified debts into 504 loans were a significant focus of the discussions.

On October 6, 2009, the Committee held a hearing titled "The Recovery Act for Small Businesses: What is Working and What Comes Next?" The Committee heard testimony on the impact that the Recovery Act has had on SBA loan volume and what steps could be taken to expand access to capital for small businesses.

This legislation is based on S. 1256, the "Small Business Lending Reauthorization and Improvement Act of 2007," which was introduced by Senator Kerry on May 1, 2007, and addressed increasing 7(a) and 504 loan limits. Additionally, this legislation is based on S. 3596, the "Small Business Lending Market Stabilization Act of 2008," which was introduced by Senator Kerry on September 25, 2008, and addressed lowering of SBA fees and refinancing debt through the 504 program. This legislation is also based on S. 1615, the "Next Step for Main Street Credit Availability Act of 2009," which was introduced by Ranking Member Snowe on August 6, 2009, and on S. 3705, the "10 Steps for a Main Street Economic Recovery Act," which was introduced by Ranking Member Snowe in the 110th Congress on November 19, 2008. Both bills included increases in 7(a) and 504 loan limits. S. 1615 contained a provision calling on the SBA Administrator to establish an online lending platform website that lists each SBA lender and allows borrowers to compare rates and apply online for SBA loans.

II. DESCRIPTION OF BILL

TITLE I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

This title of the bill increases the maximum amount that can be loaned under the SBA's 7(a), 504 and microloan programs; extends the 90 percent guarantee on 7(a) loans from February 17, 2010, until December 31, 2010; extends the authorization for the elimination of borrower fees on 7(a) and 504 loans from September 30, 2010, until December 31, 2010; updates the amount a New Market Venture Capital Company can invest in any individual company;

requires the SBA to establish an alternative size standard for 7(a) and 504 applicants; establishes a temporary alternative size standard for 7(a) and 504 applicants; allows for 7(a) loans to be divided into multiple pools for sale on the secondary market; and adopts a sense of Congress that the SBA establish an online lending platform.

The specific increases in the maximum loan sizes are as follows:

- The maximum size of a 7(a) loan increases from \$2 million to \$5 million and the maximum guarantee amount increases from \$1.5 million to \$4.5 million (based on a 90-percent guarantee), and returns to a maximum of \$3.75 million (based on a 75 to 85 percent guarantee) after December 31, 2010.
- The maximum size of a 504 loan increases from \$1.5 million to \$5 million for regular 504 loans; from \$2 million to \$5 million for 504 loans that meet public policy goals, such as for women-owned businesses; and from \$4 million to \$5.5 million for 504 loans to small manufacturers, for projects that reduce a borrower's energy consumption by at least ten percent, and for projects that generate renewable energy or renewable fuels.
- The maximum size of a microloan to a small business increases from \$35,000 to \$50,000, and the maximum amount of loan dollars outstanding to a microloan intermediary increases from \$3.5 million to \$5 million.

TITLE II—SMALL BUSINESS ACCESS TO CAPITAL

This title of the bill establishes a temporary program that allows Certified Development Companies to refinance existing commercial real estate debt through the 504 loan program. Small businesses are currently allowed to refinance debt into a 504 loan if they are expanding. This legislation removes the expansion requirement for two years, but adds a new requirement that eligible firms retain one employee for every \$65,000 lent borrowed. Additionally, to be eligible for this program, the business must have been current for the past year on the debt they are refinancing, and they cannot exceed 80 percent loan to value on the new loan. The legislation allows for multiple sources for the business owner to meet the equity requirement set forth under the legislation. This title also allows small businesses to use equity in their real property for working capital. To cover expenses for this temporary change to the 504 program, the SBA is allowed to assess additional fees.

TITLE III—OTHER MATTERS

This title of the bill adds a pilot program to increase access to capital for small businesses needing amounts larger than microloans but not yet ready for 7(a) loans, and it includes a provision that places restrictions on how this bill can be funded.

The Intermediary Lending Pilot Program would authorize a new three-year pilot program in which the SBA would make loans of \$1 million at an interest rate of 1 percent to 20 local private, non-profit lending intermediaries to capitalize small business revolving funds. Intermediaries would not pay any fees or provide any collateral to the SBA for their loans, and intermediaries would be granted a two-year grace period on principal and interest repayments to the SBA.

The purpose of the pilot program is to assist small business concerns suffering from a lack of credit due to poor economic conditions or changes in the financial market. It aims to provide flexible loan products to businesses with credit needs that exceed the loan limits of the SBA's Microloan program and that, for a variety of reasons, including lack of sufficient collateral, are unable to secure the credit with practicable terms through a conventional lender, even with the assistance of a 7(a) loan guarantee. Intermediaries would use their SBA loans to capitalize revolving loan funds through which loans between \$50,000 and \$200,000 would be made to small businesses in need of flexible debt financing.

Senator Thune authored a provision prohibiting the use of Troubled Asset Relief Program (TARP) authority or tax increases establishing a restriction on how this bill can be funded when certain conditions are met. The restriction on the use of TARP funds prohibits using the ". . . amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.) to purchase (under section 101) or guarantee (under section 102) assets under that Act."

This restriction is written to bind the actions of the Secretary of the Treasury by ensuring that TARP authority is not used either to offset, purchase, or guarantee assets in order to fund this bill.

The restriction on using funds of a revenue increase only applies if that increase was attributed directly to this bill during the time of the increase. This increase must be done as an amendment to the Internal Revenue Code of 1986 and must be done between the date this legislation is enacted and ending on December 31, 2010. Even with this restriction, no Congress can bind a future Congress. Therefore, if a revenue increase were to meet the conditions outlined; it would not be prohibited from being used to fund this legislation. Additionally, the "last in time" principle, which states that if there is conflicting legislation the latest bill passed would supersede anything passed previously, would nullify this section should another bill raise revenue that meets the requirements of the legislation.

This section makes it clear that except as provided in subsection (b) of Section 302 of the bill, nothing in this Act or the amendments made by this Act shall be construed to limit the ability of Congress to appropriate funds.

III. COMMITTEE VOTE

In compliance with rule XXVI(7b) of the Standing Rules of the Senate, the following votes were recorded on December 17, 2009.

A motion by Senator Landrieu to adopt the "Small Business Job Creation and Access to Capital Act of 2009," with a Manager's Amendment (which added the provisions of title III), was approved by an en bloc vote of 17-1, with the following Senators voting in the affirmative: Landrieu, Kerry, Levin, Harkin, Lieberman, Cantwell, Bayh, Pryor, Cardin, Shaheen, Hagan, Snowe, Vitter, Thune, Enzi, Isakson, Risch. The following Senator voting in the negative: Bond. The following Senator not voting: Wicker.

IV. COST ESTIMATE

In compliance with rule XXVI(11)(a)(1) of the Standing Rules of the Senate, the Committee estimates the cost of the legislation will be equal to the amounts discussed in the following letter from the Congressional Budget Office.

JANUARY 26, 2010.

Hon. MARY L. LANDRIEU,
Chair, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2869, the Small Business Job Creation and Access to Capital Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

S. 2869—Small Business Job Creation and Access to Capital Act of 2009

Summary: S. 2869 would make changes to several business loan and loan guarantee programs operated by the Small Business Administration (SBA). The bill also would establish a new pilot program, modeled after SBA's microloan program, to make loans to intermediaries that would then make loans to new and expanding small businesses. Based on information from SBA, CBO estimates that implementing S. 2869 would cost \$23 million over the 2010–2015 period, assuming appropriation of the necessary amounts. CBO estimates that enacting S. 2869 would have no effect on direct spending or revenues.

S. 2869 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2869 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in millions of dollars—						
	2010	2011	2012	2013	2014	2015	2010–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	8	8	8	0	0	0	24
Estimated Outlays	4	6	7	3	2	1	23

Basis of estimate: For this estimate CBO assumes that S. 2869 will be enacted early in 2010, the necessary amounts will be appropriated each year, and spending will follow historical patterns. Based on information from SBA, CBO estimates that implementing S. 2869 would cost \$23 million over the 2010–2015 period, assuming appropriation of the necessary amounts.

The budgetary accounting for SBA's direct loan and loan guarantee programs is governed by the Federal Credit Reform Act of 1990, which requires an appropriation of the subsidy and adminis-

trative costs associated with loan guarantees and loan operations. The subsidy cost is the estimated long-term cost to the government of a loan or loan guarantee, calculated on a net-present-value basis, excluding administrative costs. Administrative costs, recorded on a cash basis, include activities related to making, servicing, and liquidating loans as well as overseeing the performance of lenders.

Small Business Intermediary Lending Program

The bill would authorize a three-year program to provide loans ranging in size from \$35,000 to \$200,000 to nonprofit lenders that would, in turn, make loans to eligible small businesses. The program, modeled after the microloan program, would feature a 20-year loan term, an interest rate of 1 percent, and a two-year grace period before principal and interest payments would be first due. The bill would authorize \$20 million in loans for each of fiscal years 2010 through 2012. Based on information from SBA, CBO estimates that the subsidy rate for the program would be about 38 percent; the difference between the government's borrowing rate and the rate SBA would charge the borrowers makes up nearly half of the subsidy cost. We estimate that the subsidy cost for the authorized loan amounts would be \$23 million over the 2010–2015 period.

Business loan programs

Other provisions of S. 2869 would make changes to several of SBA's existing business loan programs. The bill would:

- Increase the maximum size of loans that SBA would be authorized to guarantee under the 7(a) and 504 loan programs;
- For a limited time, increase the guarantee percentage on 7(a) loans from up to 85 percent to 90 percent of the amount of the loan; and
- Increase the maximum size of loans intermediaries would be authorized to make to small businesses under the microloan program and the maximum amount an intermediary can loan to a single borrower.

SBA's 7(a) program provides limited guarantees on loans made by certain lending institutions to small businesses; the 504 program (also known as the certified development company program) provides guarantees on debentures issued by certified development companies to provide funding to small businesses for major fixed assets. The microloan program provides direct loans to nonprofit lenders which then offer loans to small businesses just starting up, whose capital needs are too small to qualify for the 7(a) program. Estimated subsidy rates for those programs range from zero percent for the 504 program to about 12 percent for the microloan program.

Based on information from SBA, CBO expects that changing the loan terms would not significantly affect the programs' estimated subsidy rates. Thus, CBO estimates that implementing those changes would not significantly affect spending subject to appropriation.

Intergovernmental and private-sector impact: S. 2869 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit tribal governments by establishing a grant program for tribal agencies to provide loans to new and growing

businesses. Any costs to tribal governments of participating in the program would be incurred voluntarily.

Estimate prepared by: Federal costs: Susan Willie; Impact on state, local, and tribal governments: Elizabeth Cove Delisle; Impact on the private sector: Sam Wice.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

V. EVALUATION OF REGULATORY IMPACT

In compliance with rule XXVI(11)(b) of the Standing Rules of the Senate, it is the opinion of the Committee that no significant additional regulatory impact will be incurred in carrying out the provisions of this legislation. There will be no additional impact on the personal privacy of companies or individuals who utilize the services provided.

VI. SECTION-BY-SECTION ANALYSIS

Section 1. Short title

TITLE I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

Section 101. Section 7(a) business loans

This section permanently increases the maximum loan and guarantee sizes for 7(a) loans and temporarily extends a higher guarantee. Specifically, the 7(a) loan size increases from \$2 million to \$5 million, and the maximum guarantee amount increases from \$1.5 million to \$4.5 million, based on a 90 percent guarantee. The 90 percent guarantee is temporary, authorized through December 31, 2010, and then reverts back to the permanent levels of 85 percent for loans of \$150,000 and less, and to 75 percent for loans that are more than \$150,000. At that time, the maximum guarantee will also revert back to \$3.75 million from \$4.5 million. The higher loan amounts help businesses in need of floor plan financing, as well as small manufacturers, hotels, restaurants, franchisees, and those located in high-cost areas.

Section 102. Maximum loan amounts under 504 Program

This section increases from \$1.5 to \$5 million, the loan limit for regular 504 loans; from \$2 million to \$5 million for loans that meet public policy goals, such as for women-owned businesses; and from \$4 million to \$5.5 million for loans to small manufacturers, for projects that reduce a borrower's energy consumption by at least ten percent, and for projects that generate renewable energy or renewable fuels.

Section 103. Maximum loan limits under Microloan Program

This section increases the maximum loan a microloan intermediary can make to a small business from \$35,000 to \$50,000 and increases the maximum loan a microloan intermediary can receive from \$3.5 million to \$5 million.

Section 104. Temporary fee reductions

This section extends the waivers for the 7(a) borrower fees and the 504 borrower and bank fees enacted as part of the American Recovery and Reinvestment Act (ARRA or the Recovery Act) from

September 30, 2010, to December 31, 2010. This is solely an authorization and will need separate appropriations to be implemented.

Section 105. New Markets Venture Capital company investment limitations

This section fixes an omission in the Recovery Act so that New Markets Venture Capital (NMVC) firms have equal treatment to Small Business Investment Companies (SBICs), as Congress intended. Specifically, it updates the limit on the size of the investment a NMVC fund can invest in any one company, making the program more attractive to investors and small businesses, and bringing them in-line with private-sector practices.

Section 106. Alternative size standards

This section requires the SBA to establish an optional size standard which is applicable to both 7(a) borrowers and 504 borrowers. Specifically, the new standard utilizes a maximum tangible net worth and an average net income as an alternative to industry standards, which are considered confusing and burdensome. In addition, until an alternative size standard is established as required by this section, this bill directs the Administration to issue an interim final rule making borrowers for 7(a) and 504 loans eligible for such loans if their maximum tangible net worth is \$15 million or less *and* their average net income after Federal income taxes for the two full fiscal years before the date of application does not exceed \$5 million.

Section 107. Sale of 7(a) loans in secondary market

This section allows the Administration to approve a request from a pool assembler of SBA loan guarantees to divide loan guarantees into increments of \$500,000 for SBA loans that have a guarantee portion of more than \$500,000. The purpose of this section is to maintain the marketability of 7(a) loans in the secondary market as the loan limits increase.

Section 108. Online lending platform

This section adopts a sense of the Congress that the Administrator should establish a website that lists each lender that makes SBA guaranteed loans as well as the lender's rates so that businesses, or potential business owners, can identify SBA lenders in their area and compare rates.

TITLE II—SMALL BUSINESS ACCESS TO CAPITAL

Section 202. Low interest refinancing under the local development business loan program

This section temporarily (two years) amends the Small Business Investment Act so that businesses can use 504 loan guarantees to refinance existing business debt, if it is current, even if the business is not expanding. A business is eligible for this refinancing if they create or retain one job per \$65,000 borrowed. The business will be able to finance \$65,000 per job retained, or up to \$5.5 million, based on the job creation requirements. This provision complements a 504 refinance provision adopted as part of the Recovery

Act, enhancing a small business's options to maintain a healthy cash flow until the economy improves.

TITLE III—OTHER MATTERS

Section 301. Small business Intermediary Lending Pilot Program

This section authorizes a pilot program for intermediaries making loans between \$50,000 and \$200,000.

The Intermediary Lending Pilot Program would authorize a new three-year pilot program in which the SBA would make loans of \$1 million at an interest rate of 1 percent to 20 local private non-profit lending intermediaries to capitalize small business revolving funds. Intermediaries would not pay any fees or provide any collateral to the SBA for their loans and intermediaries would be granted a two-year grace period on principal and interest repayments to the SBA.

The purpose of the pilot program is to assist small business concerns suffering from a lack of credit due to poor economic conditions or changes in the financial market. It aims to provide flexible loan products to businesses with credit needs that exceed the loan limits of the SBA's Microloan program and that, for a variety of reasons, including lack of sufficient collateral, are unable to secure the credit with practicable terms through a conventional lender, even with the assistance of a 7(a) guarantee. Intermediaries would use their SBA loans to capitalize revolving loan funds through which loans of up to \$200,000 would be made to small businesses in need of flexible debt financing.

Section 302. Prohibition on using TARP funds or tax increases

This section outlines the prohibition on using certain funds to finance this bill. Specifically, it prohibits the use of Troubled Asset Relief Program (TARP) funds "amounts made available to the Secretary of the Treasury under title I of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5201 et seq.) to purchase (under section 101) or guarantee (under section 102) assets under that Act." Additionally, the bill restricts and the use of funds from any revenue increase attributable to any amendment to the Internal Revenue Code of 1986 made during the period beginning on the date of enactment of this Act and ending on December 31, 2010.

This section makes it clear that except as provided in subsection (b) of Section 302 of the bill, nothing in this Act or the amendments made by this Act shall be construed to limit the ability of Congress to appropriate funds.