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Small Business Administration 7(a) Loan Guaranty Program

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Summary

The Small Business Administration (SBA) administers several programs to support small businesses, including loan guaranty programs designed to encourage lenders to provide loans to small businesses "that might not otherwise obtain financing on reasonable terms and conditions." The SBA's 7(a) loan guaranty program is considered the agency's flagship loan program. Its name is derived from Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended), which authorizes the SBA to provide business loans and loan guaranties to American small businesses.

In FY2016, the SBA approved 64,073 7(a) loans totaling more than $24.1 billion. The average approved 7(a) loan amount was $376,537. Proceeds from 7(a) loans may be used to establish a new business or to assist in the operation, acquisition, or expansion of an existing business.

Congressional interest in the 7(a) program has increased in recent years because of concerns that small businesses might be prevented from accessing sufficient capital to enable them to assist in the economic recovery. Some Members of Congress have argued that the SBA should be provided additional resources to assist small businesses in acquiring capital necessary to start, continue, or expand operations with the expectation that in so doing small businesses will create jobs. Others worry about the long-term adverse economic effects of spending programs that increase the federal deficit. They advocate business tax reduction, financial credit market reforms, and fiscal restraint as the best means to help small businesses further economic growth and job creation.

This report discusses the rationale provided for the 7(a) program; the program's borrower and lender eligibility standards and program requirements; and program statistics, including loan volume, loss rates, use of proceeds, borrower satisfaction, and borrower demographics. It also examines issues raised concerning the SBA's administration of the 7(a) program, including the oversight of 7(a) lenders and the program's lack of outcome-based performance measures.

The report also surveys congressional and presidential actions taken in recent years to enhance small businesses' access to capital. For example,

- Congress approved legislation during the 111th Congress to provide more than $1.1 billion to temporarily subsidize the 7(a) and 504/Certified Development Companies (504/CDC) loan guaranty programs' fees and temporarily increase the 7(a) program's maximum loan guaranty percentage to 90% (funding was exhausted on January 3, 2011); raise the 7(a) program's gross loan limit from $2 million to $5 million; and establish an alternative size standard for the 7(a) and 504/CDC loan programs.
- The SBA waived the up-front, one-time loan guaranty fee and ongoing servicing fee for 7(a) loans of $150,000 or less approved in FY2014, FY2015, and FY2016; the up-front, one-time loan guaranty fee for 7(a) loans of $150,000 or less approved in FY2017; the up-front, one-time loan guaranty fee for veteran loans under the SBAExpress program (up to $350,000) from January 1, 2014, through the end of FY2015 (called the Veterans Advantage Program); 50% of the up-front, one-time loan guaranty fee on all non-SBAExpress 7(a) loans to veterans of $150,001 to $5 million in FY2015 and FY2016; and 50% of the up-front, one-time loan guaranty fee on all non-SBAExpress 7(a) loans to veterans of $150,001 to $500,000 in FY2017.
- P.L. 114-38, the Veterans Entrepreneurship Act of 2015, provided statutory authorization and made permanent the up-front, one-time loan guaranty fee for veteran loans under the SBAExpress program and increased the 7(a) program's FY2015 authorization limit to $23.5 billion from $18.75 billion.

- P.L. 114-113, the Consolidated Appropriations Act, 2016, increased the 7(a) program's authorization limit to $26.5 billion for FY2016 from $23.5 billion in FY2015.
- P.L. 115-31, the Consolidated Appropriations Act, 2017, increased the 7(a) program's authorization limit to $27.5 billion for FY2017 from $26.5 billion in FY2016.

The **Appendix** to this report provides a brief description of the 7(a) program's SBAExpress, Export Express, and Community Advantage programs.

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Small Business Administration Loan Guaranty Programs

The Small Business Administration (SBA) administers programs to support small businesses, including loan guaranty programs to encourage lenders to provide loans to small businesses "that might not otherwise obtain financing on reasonable terms and conditions."[1] The SBA's 7(a) loan guaranty program is considered the agency's flagship loan program.[2] Its name is derived from Section 7(a) of the Small Business Act of 1953 (P.L. 83-163, as amended), which authorizes the SBA to provide and guarantee business loans to American small businesses.

The SBA also administers several 7(a) subprograms that offer streamlined and expedited loan procedures for particular groups of borrowers, including the SBAExpress, Export Express, and Community Advantage Pilot programs (see the **Appendix** for additional details). Although these subprograms have their own distinguishing eligibility requirements, terms, and benefits, they operate under the 7(a) program's authorization.[3]

Proceeds from 7(a) loans may be used to establish a new business or to assist in the operation, acquisition, or expansion of an existing business. Specific uses include to acquire land (by purchase or lease); improve a site (e.g., grading, streets, parking lots, and landscaping); purchase, 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.[4]

In FY2016, the SBA approved 64,073 7(a) loans totaling over $24.1 billion. The average approved 7(a) loan amount was $376,537.[5] As will be discussed, the total number and amount of SBA 7(a) loans approved (and actually disbursed) declined in FY2008 and FY2009, increased during FY2010 and FY2011, declined somewhat in FY2012, and have increased since then.

Historically, one of the justifications presented for funding the SBA's loan guaranty programs has been that small businesses can be at a disadvantage, compared with other businesses, when trying to obtain access to sufficient capital and credit.[6] Congressional interest in the 7(a) loan program

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

[2] U.S. Congress, House Committee on Small Business, Subcommittee on Finance and Tax, *Subcommittee Hearing on Improving the SBA's Access to Capital Programs for Our Nation's Small Business*, 110th Cong., 2nd sess., March 5, 2008, H.Hrg. 110-76 (Washington: GPO, 2008), p. 2.

[3] SBA, "Small Loan Advantage and Community Advantage 7(a) Loan Initiatives," at https://www.sba.gov/offices/headquarters/oca/resources/14836; and SBA, "Office of Capital Access/Resources: The SBA Export Express Program," at https://www.sba.gov/offices/headquarters/oca/resources/5929. The SBA also administers several special purpose loan guaranty programs that address particular business needs, including the International Trade Loan Program, Export Working Capital Program, the Community Adjustment and Investment Program (CAIP), CAPLines Program, Employee Trusts Program, and Pollution Control Program. The Pollution Control Program is currently not funded. See SBA, "Special Purpose Loans Program," at https://www.sba.gov/category/navigation-structure/loans-grants/small-business-loans/sba-loan-programs/7a-loan-program/special-purpose-loans-program.

[4] 13 C.F.R. §120.120.

[5] SBA, "SBA Lending Statistics for Major Programs (as of 9/30/2016)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_Lending_Statistics_for_Major_Programs_as_of_09-30-2016.pdf. The number of 7(a) loans approved annually is typically about 10% to 20% higher than the number of loans disbursed (e.g., some borrowers decide not to accept the loan or there is a change in business ownership). The amount of 7(a) loans approved annually is typically about 10% to 15% higher than the amount disbursed.

[6] U.S. Government Accountability Office (GAO), *Small Business Administration: 7(a) Loan Program Needs Additional Performance Measures*, GAO-08-226T, November 1, 2007, pp. 3, 9-11, at http://www.gao.gov/new.items/
(continued...)

has increased in recent years because of concerns that small businesses might be prevented from accessing sufficient capital to enable them to assist in the economic recovery.

Some Members of Congress have argued that the SBA should be provided additional resources to assist small businesses in acquiring capital necessary to start, continue, or expand operations with the expectation that in so doing small businesses will create jobs. Others worry about the long-term adverse economic effects of spending programs that increase the federal deficit. They advocate 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.

This report discusses the rationale provided for the 7(a) program; the program's borrower and lender eligibility standards and program requirements; and program statistics, including loan volume, loss rates, use of the proceeds, borrower satisfaction, and borrower demographics. It also examines issues raised concerning the SBA's administration of the 7(a) program, including the oversight of 7(a) lenders and the program's lack of outcome-based performance measures.

It also surveys congressional and presidential actions taken in recent years to help small businesses gain greater access to capital. For example, 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/Certified Development Companies (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).[7]
- P.L. 111-240, the Small Business Jobs Act of 2010, provided $505 million (plus $5 million for administrative expenses) to extend the fee subsidies and 90% loan guaranty percentage through December 31, 2010; increased the 7(a) program's gross loan limit from $2 million to $5 million; and established an alternative size standard for the 7(a) and 504/CDC loan programs to enable more small businesses to qualify for assistance.
- P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to continue the fee subsidies and the 7(a) program's 90% maximum loan guaranty percentage through March 4, 2011, or until available funding was exhausted (which occurred on January 3, 2011).

During the 112th Congress, several bills were introduced to expand the 7(a) program.

- S. 1828, a bill to increase small business lending (and for other purposes), would have reinstated for one year following the date of its enactment the fee subsidies for the 7(a) and 504/CDC loan guaranty programs and the 90% loan guaranty percentage for the 7(a) program, which were originally authorized by ARRA.

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d08226t.pdf; and Veronique de Rugy, *Why the Small Business Administration's Loan Programs Should Be Abolished*, American Enterprise Institute for Public Policy Research, AEI Working Paper #126, April 13, 2006, at http://www.aei.org/files/2006/04/13/20060414_wp126.pdf. Proponents of federal funding for the SBA's loan guarantee programs also argue that small businesses can promote competitive markets. See P.L. 83-163, §2(a), as amended; and 15 U.S.C. §631a.

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

- H.R. 2936, the Small Business Administration Express Loan Extension Act of 2011, would have extended a one-year increase in the maximum loan amount for the SBAExpress program from $350,000 to $1 million for an additional year. That temporary increase was authorized by P.L. 111-240 and expired on September 27, 2011.
- S. 532, the Patriot Express Authorization Act of 2011, would have provided statutory authorization for the Patriot Express Pilot Program and increased its loan guaranty percentages and its maximum loan amount from $500,000 to $1 million. The Patriot Express Pilot Program was subsequently discontinued by the SBA on December 31, 2013.

During the 113th Congress, the SBA

- waived the up-front, one-time loan guaranty fee and ongoing servicing fee for 7(a) loans of $150,000 or less approved in FY2014 and FY2015 as a means to encourage the demand for smaller 7(a) loans.[8] H.R. 2462, the Small Business Opportunity Acceleration Act of 2013, would have made the fee waiver for smaller 7(a) loans permanent.
- waived the up-front, one-time loan guaranty fee for a loan to a veteran or to a veteran's spouse under the SBAExpress program (up to $350,000) from January 1, 2014, through the end of FY2015 (called the SBA Veterans Advantage Program).[9]
- waived 50% of the up-front, one-time loan guaranty fee on all non-SBAExpress 7(a) loans to veterans of $150,001 up to and including $5 million in FY2015.[10]

In addition, P.L. 113-235, the Consolidated and Further Continuing Appropriations Act, 2015, provided statutory authorization for the Veterans Advantage fee waiver in FY2015.[11]

During the 114th Congress, the SBA

- waived the up-front, one-time loan guaranty fee for 7(a) loans of $150,000 or less approved in FY2016 and FY2017 as a means to encourage the demand for smaller 7(a) loans.[12]

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[8] SBA, "SBA Information Notice: 7(a) and 504 Fees Effective on October 1, 2013," at https://www.sba.gov/sites/default/files/lender_notices/5000-1288.pdf; and SBA, "SBA Information Notice: 7(a) and 504 Fees Effective on October 1, 2014," at https://www.sba.gov/sites/default/files/lender_notices/5000-1318.pdf.

[9] The small business must be owned and controlled (51%+) by one or more of the following groups: veteran, active duty military in the Transition Assistance Program, reservist or National Guard member, a spouse of any of these groups, or a widowed spouse of a servicemember or veteran who died during service or of a service-connected disability. See SBA, "SBA Procedural Notice: SBA Veterans Advantage," December 18, 2013, at https://www.sba.gov/sites/default/files/lender_notices/5000-1299_0.pdf; and SBA, "SBA Information Notice: SBA Veterans Advantage: Renewal and Expansion of Fee Relief," September 19, 2014, at https://www.sba.gov/sites/default/files/lender_notices/5000-1319.pdf.

[10] SBA, "SBA Information Notice: SBA Veterans Advantage: Renewal and Expansion of Fee Relief," September 19, 2014, at https://www.sba.gov/sites/default/files/lender_notices/5000-1319.pdf.

[11] S. 2143, the Veterans Entrepreneurship Act, would have authorized and made permanent the SBA's Veterans Advantage fee waiver.

[12] SBA, "SBA Information Notice: 7(a) and 504 Fees Effective on October 1, 2015," at https://www.sba.gov/sites/default/files/lender_notices/5000-1352.pdf; and SBA, "SBA Information Notice: 7(a) and 504 Fees Effective October 1, 2016," at https://www.sba.gov/sites/default/files/lender_notices/5000-1389.fees_for_FY_2017.pdf.

- waived the annual service fee for 7(a) loans of $150,000 or less approved in FY2016 (increased to 0.546% in FY2017).[13]
- waived 50% of the up-front, one-time loan guaranty fee on all non-SBAExpress 7(a) loans to veterans of $150,001 to $5 million in FY2016; and 50% of the up-front, one-time loan guaranty fee on all non-SBAExpress 7(a) loans to veterans of $150,001 to $500,000 in FY2017.[14]

In addition,

- P.L. 114-38, the Veterans Entrepreneurship Act of 2015, provided statutory authorization and made permanent the veteran's fee waiver under the SBAExpress program, 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.[15] The SBA waived this fee in FY2016, and is waiving it in FY2017. The act also increased the 7(a) program's FY2015 authorization limit of $18.75 billion (on disbursements) to $23.5 billion.
- P.L. 114-113, the Consolidated Appropriations Act, 2016, increased the 7(a) program's authorization limit to $26.5 billion for FY2016.
- P.L. 114-223, the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, authorizes the SBA to use funds from its business loan program account "to accommodate increased demand for commitments for [7(a)] general business loans" for the duration of the continuing resolution (initially December 9, 2016, later extended by P.L. 114-254, the Further Continuing and Security Assistance Appropriations Act, 2017, to April 28, 2017).

Also, the following bills concerning the 7(a) program were introduced:

- S. 2125, the Small Business Lending and Economic Inequality Reduction Act of 2015, would have provided permanent, statutory authorization for the Community Advantage Pilot program. On December 28, 2015, the SBA announced that it was extending the Community Advantage Pilot program through March 31, 2020. It had been set to expire on March 15, 2017.

  S. 2496, the Help Small Businesses Access Affordable Credit Act, would have authorized the SBA Administrator, with prior notification to the House and Senate Committees on Small Business and prior notification and approval of the House and Senate Committees on Appropriations, to make loans in an amount equal to not more than 110% of the 7(a) program's authorization limit if the demand for 7(a) loans exceeds the limit. The Obama Administration also

[13] SBA, "SBA Information Notice: 7(a) and 504 Fees Effective October 1, 2016," at https://www.sba.gov/sites/default/files/lender_notices/5000-1389.fees_for_FY_2017.pdf; and SBA, "Fees for 7(a) Loans Made to Veteran Owned Small Businesses Effective October 1, 2016," at https://www.sba.gov/sites/default/files/lender_notices/5000-1390.pdf.

[14] SBA, "SBA Information Notice: SBA Veterans Advantage - Renewal of Fee Relief for Certain Loans," September 30, 2015, at https://www.sba.gov/sites/default/files/lender_notices/5000-1354.pdf; and SBA, "Fees for 7(a) Loans Made to Veteran Owned Small Businesses Effective October 1, 2016," at https://www.sba.gov/sites/default/files/lender_notices/5000-1390.pdf.

[15] U.S. Congress, House Committee on Small Business, *Veterans Entrepreneurship Act of 2015*, report to accompany H.R. 2499, 114th Cong., 1st sess., June 25, 2015, H.Rept. 114-187 (Washington: GPO, 2015), p. 9.

requested authorization to allow the SBA Administrator to continue to issue loans should the demand for 7(a) loans exceed the program's authorization limit.[16]

- S. 2992, the Small Business Lending Oversight Act of 2016, would have required the Director of the SBA's Office of Credit Risk Management (OCRM) to impose penalties on 7(a) lenders who "knowingly and repeatedly" undertake specified activities; required the SBA to annually undertake and report the findings of a risk analysis of the 7(a) program's loan portfolio; redefined the credit elsewhere requirement; authorized fees to be used to support OCRM operations; and, among other provisions, prohibited the SBA from approving any loan if its financing is more than 100% of project costs.

During the 115th Congress

- P.L. 115-31, the Consolidated Appropriations Act, 2017, increased the 7(a) program's authorization limit to $27.5 billion for FY2017.

The **Appendix** to this report provides a brief description of the 7(a) program's SBAExpress, Export Express, and Community Advantage programs.

Borrower Eligibility Standards and Program Requirements

Borrower Eligibility Standards

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

- be located in the United States;
- be a for-profit operating business (except for loans to eligible passive companies);
- qualify as small under the SBA's size requirements;[17]
- demonstrate a need for the desired credit; and
- be certified by a lender that the desired credit is unavailable to the applicant on reasonable terms and conditions from nonfederal sources without SBA assistance.[18]

To qualify for an SBA 7(a) loan, applicants must be creditworthy and able to reasonably assure repayment. SBA requires lenders to consider the strength of the business and the applicant's

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[16] Section 521. For loans and loan guarantees that do not require budget authority and the program level has been established in this act, the SBA Administrator may increase the program level for such loans and loan guarantees by not more than 15%: Provided, that prior to the Administrator implementing such an increase, the Administrator notifies, in writing, the Committees on Appropriations and Small Business of both Houses of Congress at least 15 days in advance. See U.S. Office of Management and Budget, *Budget of the United States Government, FY2017; Appendix – Small Business Administration,* p. 1223, at https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/sba.pdf.

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

[18] 13 C.F.R. §120.100; and 13 C.F.R. §120.101. A list of ineligible businesses, such as nonprofit businesses, insurance companies, and businesses deriving more than one-third of gross annual revenue from legal gambling activities, is contained in 13 C.F.R. §120.110.

- character, reputation, and credit history;
- experience and depth of management;
- past earnings, projected cash flow, and future prospects;
- ability to repay the loan with earnings from the business;
- sufficient invested equity to operate on a sound financial basis;
- potential for long-term success;
- nature and value of collateral (although inadequate collateral will not be the sole reason for denial of a loan request); and
- affiliates' effect on the applicant's repayment ability.[19]

Borrower Program Requirements

Use of Proceeds

Borrowers may use 7(a) loan proceeds 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.[20]

Borrowers are prohibited from using 7(a) loan proceeds to

- refinance existing debt where the lender is in a position to sustain a loss and the SBA would take over that loss through refinancing;
- effect a partial change of business ownership or a change that will not benefit the business;
- permit the reimbursement of funds owed to any owner, including any equity injection or injection of capital for the business's continuance until the loan supported by the SBA is disbursed;
- repay delinquent state or federal withholding taxes or other funds that should be held in trust or escrow; or
- pay for a non-sound business purpose.[21]

[19] 13 C.F.R. §120.150.

[20] 13 C.F.R. §120.120.

[21] 13 C.F.R. §120.130; and SBA, "Use of 7(a) Loan Proceeds," at http://www.sba.gov/content/use-7a-loan-proceeds.

Loan Amounts

As mentioned previously, P.L. 111-240 increased the 7(a) program's maximum gross loan amount for any one 7(a) loan from $2 million to $5 million (up to $3.75 million maximum guaranty). In FY2016, the average approved 7(a) loan amount was $376,537, and about 32% of all 7(a) loans exceeded $2 million.[22]

Loan Terms, Interest Rate, and Collateral

Loan Terms

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.[23]

Interest Rate

Lenders are allowed to charge borrowers "a reasonable fixed interest rate" or, with the SBA's approval, a variable interest rate.[24] The SBA uses a multistep formula to determine the maximum allowable fixed interest rate and periodically publishes that rate and the maximum allowable variable interest rate in the *Federal Register*.[25]

The maximum allowable fixed interest rates in May 2017 for 7(a) loans with maturities of less than seven years are 8.36% for loans greater than $50,000, 9.36% for loans over $25,000 but not exceeding $50,000, and 10.36% for loans of $25,000 or less. The maximum allowable fixed interest rates in May 2017 for 7(a) loans with maturities of seven years or more are 8.86% for loans greater than $50,000, 9.86% for loans over $25,000 but not exceeding $50,000, and 10.86% for loans of $25,000 or less.[26]

The 7(a) program's maximum allowable variable interest rate may be pegged to the lowest prime rate (4.00% in May 2017), the 30-day LIBOR rate plus 300 basis points (3.99% in May 2017), or the SBA optional peg rate (1.63% in the third quarter of FY2017).[27] The optional peg rate is a

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[22] SBA, "SBA Lending Statistics for Major Programs (as of 9/30/2016)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_Lending_Statistics_for_Major_Programs_as_of_09-30-2016.pdf.

[23] 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.

[24] 13 C.F.R. §120.213.

[25] For fixed interest rates, the SBA first calculates a fixed base rate using the 30 day London Interbank Offered Rate (LIBOR) in effect on the first business day of the month as published in a national financial newspaper published each business day, adds to that 300 basis points (3%) and the average of the 5-year and 10-year LIBOR swap rates in effect on the first business day of the month as published in a national financial newspaper published each business day. For 7(a) fixed loans with maturities of less than seven years, the SBA adds 2.25% to the fixed base rate to arrive at the maximum allowable fixed rate. For 7(a) fixed loans with maturities of seven years or longer, the SBA adds 2.75% to the fixed base rate to arrive at the maximum allowable fixed rate. Lenders may increase the maximum fixed interest rate allowed by an additional 1% if the fixed rate loan is over $25,000 but not exceeding $50,000, and by an additional 2% if the fixed rate loan is $25,000 or less. See SBA, "Business Loan Program Maximum Allowable Fixed Rate," 74 *Federal Register* 50263-50264, September 30, 2009.

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

[27] Ibid; and SBA, "Welcome Lenders," at https://www.sba.gov/for-lenders.

weighted average of rates the federal government pays for loans with maturities similar to the average SBA loan.[28]

Collateral

For 7(a) loans of $25,000 or less, the SBA does not require lenders to take collateral. For 7(a) loans exceeding $25,000 to $350,000, the lender must follow the collateral policies and procedures that it has established and implemented for its similarly sized non-SBA-guaranteed commercial loans. However, the lender must, at a minimum, obtain a first lien on assets financed with loan proceeds, and a lien on all of the applicant's fixed assets to secure the loan. For 7(a) loans exceeding $350,000, the SBA requires lenders to collateralize the loan to the maximum extent possible up to the loan amount.[29] If business assets do not fully secure the loan, the lender must take available equity in the principal's personal real estate (residential and investment) as collateral.[30]

7(a) loans are considered "fully secured" if the lender has taken security interests in all available fixed assets with a combined "net book value" up to the loan amount.[31] The SBA directs lenders to not decline a loan solely on the basis of inadequate collateral because "one of the primary reasons lenders use the SBA-guaranteed program is for those Small Business Applicants that demonstrate repayment ability but lack adequate collateral to repay the loan in full in the event of a default."[32]

Lender Eligibility Standards and Program Requirements

Lender Eligibility Standards

Lenders must have a continuing ability to evaluate, process, close, disburse, service, and liquidate small business loans; be open to the public for the making of such loans (and not be a financing subsidiary, engaged primarily in financing the operations of an affiliate); have continuing good character and reputation; and be supervised and examined by a state or federal regulatory authority, satisfactory to the SBA. They must also maintain satisfactory performance, as determined by the SBA through on-site review/examination assessments, historical performance measures (such as default rate, purchase rate, and loss rate), and loan volume to the extent that it affects performance measures.[33] In FY2015, 2,163 lenders provided 7(a) loans.[34]

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[28] SBA, "7(a) Loan Program: Terms and Conditions," at https://www.sba.gov/offices/headquarters/oca/resources/13022.

[29] SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 156, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[30] Ibid.

[31] Ibid., p. 155. "Net book value" is defined as an asset's original price minus depreciation and amortization. New machinery and equipment may be valued at 75% of price minus any prior liens for the calculation of "fully secured." Used or existing machinery and equipment may be valued at 50% of Net Book Value or 80% with an Orderly Liquidation Appraisal minus any prior liens for the calculation of "fully-secured." Real estate can be valued at 85% of the market value for the calculation of "fully-secured."

[32] Ibid., p. 154.

[33] 13 C.F.R. §120.410.

CLP and PLP Lenders

The SBA established the Certified Lenders Program (CLP) on February 26, 1979, initially on a six-month pilot basis.[35] It is designed to provide expeditious service on 7(a) loan applications received from lenders who have a successful SBA lending track record and a thorough understanding of SBA policies and procedures. CLP lenders submit the same application forms and documentation required of standard 7(a) loan packages. They must also prepare a draft of the SBA Authorization (of loan guaranty approval). The SBA loan reviewer "relies heavily on the information the lender provides."[36] If the lender's presentation is not adequate for CLP processing, the SBA may convert the application from CLP processing to standard loan processing. In recent years, CLP lenders have approved about 1.0% of the number of 7(a) loans approved each year and 2.4% of the amount of 7(a) loans approved each year.[37]

The SBA started the Preferred Lenders Program (PLP) on March 1, 1983, initially on a pilot basis.[38] It is designed to streamline the procedures necessary to provide financial assistance to small businesses by delegating the final credit decision and most servicing and liquidation authority and responsibility to carefully selected PLP lenders.[39] PLP loan approvals are subject only to a brief eligibility review and the assignment of a loan number by SBA.[40] PLP lenders draft the SBA Authorization (of loan guaranty approval) without the SBA's review, and execute it on behalf of the SBA. In FY2016, PLP lenders approved 17,249 7(a) loans (26.9% of all 7(a) loans), amounting to $15.6 billion (64.5% of the total amount approved).[41]

PLP lenders must comply with all of the SBA's business loan eligibility requirements, credit policies, and procedures. The PLP lender is required to stay informed on, and apply, all of the SBA's loan program requirements. They must also complete and retain in the lender's file all forms and documents required of standard 7(a) loan packages.[42]

(...continued)

[34] SBA, *Fiscal Year 2017 Congressional Budget Justification and FY 2015 Annual Performance Report*, p. 34. There were 2,476 active 7(a) lenders in FY2012, 2,345 in FY2013, and 2,244 in FY2014.

[35] U.S. Congress, Senate Select Committee on Small Business, *SBA Loan Oversight*, hearing on SBA loan oversight, 96th Cong., 1st sess., September 18, 1997 (Washington: GPO, 1997), p. 31; and GAO, *SBA's Pilot Programs to Improve Guaranty Loan Procedures Need Further Development*, CED-81-25, February 2, 1981, p. 7, at http://www.gao.gov/assets/140/131789.pdf; and GAO, *SBA's Certified Lenders Program Falls Short of Expectations*, RCED-83-99, June 7, 1983, p. 1, at http://www.gao.gov/assets/150/140126.pdf.

[36] SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 19, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[37] SBA, Office of Congressional and Legislative Affairs, "Correspondence with the author," November 21, 2013.

[38] GAO, *SBA's Certified Lenders Program Falls Short of Expectations*, RCED-83-99, June 7, 1983, p. 3, at http://www.gao.gov/assets/150/140126.pdf.

[39] GAO, *Small Business: Analysis of SBA's Preferred Lenders Program*, GAO/RCED-92-124, May 15, 1992, pp. 1-4, http://www.gao.gov/assets/220/216229.pdf.

[40] SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), pp. 22-23, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[41] PLP lenders approved 16,549 7(a) loans totaling $15.1 billion in FY2015; 12,570 7(a) loans totaling $11.7 billion in FY2014, 13,457 7(a) loans totaling $10.4 billion in FY2013, and 12,472 7(a) loans totaling $8.4 billion in FY2012. See SBA, "SBA Lending Statistics for Major Programs (as of 9/30/2016)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_Lending_Statistics_for_Major_Programs_as_of_09-30-2016.pdf.

[42] SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 29, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

Lender Program Requirements

The Application Process

Borrowers submit applications for a 7(a) business loan to private lenders. The lender reviews the application and decides if it merits a loan on its own or if it has some weaknesses which, in the lender's opinion, do not meet standard, conventional underwriting guidelines and require additional support in the form of an SBA guaranty. The SBA guaranty assures the lender that if the borrower does not repay the loan and the lender has adhered to all applicable regulations concerning the loan, the SBA will reimburse the lender for its loss, up to the percentage of the SBA's guaranty. The small business borrowing the money remains obligated for the full amount due.

If the lender determines that it is willing to provide the loan, but only with an SBA guaranty, it submits the application for approval to the SBA's Loan Guaranty Processing Center (LGPC) through the SBA's E-Tran (Electronic Loan Processing/Servicing) website (which is available through SBA One, the SBA's automated lending platform) or, if attachments to the application are too large for E-Tran, by secured electronic file transfer.

The LGPC has two physical locations: Citrus Heights, CA, and Hazard, KY.[43] This center has responsibility for processing 7(a) loan guaranty applications for lenders who do not have delegated authority to make 7(a) loans without the SBA's final approval.[44]

The SBA has authorized PLP and express lenders to make credit decisions without SBA review prior to loan approval. However, the PLP and express lender's analysis is subject to the SBA's review and determination of adequacy when the lender requests the SBA to purchase its guaranty and when the SBA is conducting a review of the lender.[45]

As an additional safeguard against the potential for loan defaults, the SBA now requires all non-express 7(a) loans of $350,000 or less to be SBA credit scored through E-Tran prior to submission/approval.[46]

- If the credit score is below the minimum set by the SBA (currently 140 for 7(a) loans of $350,000 or less, and 120 for Community Advantage loans), the loan

[43] SBA, "7a Loan Guaranty Processing Center (Citrus Heights, CA & Hazard, KY)," at https://www.sba.gov/CitrusHeightsLGPC.

[44] GAO, *Small Business Administration: Opportunities Exist to Build on Leadership's Efforts to Improve Agency Performance and Employee Morale*, GAO-08-995, September 24, 2008, p. 3, at http://www.gao.gov/new.items/d08995.pdf.

[45] SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 153, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[46] The SBA's credit scoring requirement was initially required of Small Loan Advantage loans, effective June 1, 2012. See SBA, "SBA Information Notice: Revised and Expanded Small Loan Advantage – Changes Incorporated into SOP 50 10 5(E)," May 25, 2012, at https://www.sba.gov/content/revised-and-expanded-small-loan-advantage-changes-incorporated-sop-50-10-5e. The SBA's credit scoring requirement was expanded to all non-express 7(a) loans of $350,000 or less on January 1, 2014. See SBA, "SOP 50 10 5(F): Lender and Development Company Loan Programs," (effective January 1, 2014), p. 161, at https://www.sba.gov/sites/default/files/Clean%20FINAL%20SOP%2050%2010%205%20%28F%29.pdf. The SBA calculates the credit score based on a combination of consumer credit bureau data, business bureau data, borrower financials, and application data. The minimum acceptable credit score is based on the lower end of the risk profile of the current SBA portfolio and may be adjusted up or down from time to time.

may only be submitted as a standard 7(a) application or as an SBAExpress loan (for a 50% guaranty) if the lender is a SBAExpress lender.

- If the credit score is acceptable to the SBA, the lender is a PLP lender, and the loan is eligible to be processed under the PLP lender's delegated authority, the lender will receive an SBA loan number indicating that the loan is approved.[47] The PLP lender's documentation, including underwriting, closing, and servicing, must be maintained in their files, and can be reviewed by the SBA at any time.
- If the lender is not a PLP lender or if the loan is not eligible to be submitted under the PLP lender's delegated authority, E-Tran will generate a message instructing the lender to refer the loan to the LGPC for review.[48]

The application materials required for a SBA guaranty vary depending on the size of the loan ($350,000 or less versus exceeding $350,000) and the method of processing used by the lender (standard versus expedited/express).

Application packages "must include the forms and information the lender requires in order to make an informed eligibility and credit decision" and the application obtained by the lender from the applicant "must be certified by the applicant as true and complete."[49] The following SBA documentation is required for all 7(a) standard loans of $350,000 or less:

- *Form 1919: Borrower Information Form*. SBA form 1919 provides information about the borrower (name, name of business, social security number, date and place of birth, gender, race, veteran, etc.); the loan request; any indebtedness; the principals and affiliates; current or previous government financing; the applicant's eligibility (e.g., criminal information, citizenship status); the loan's eligibility for delegated or expedited processing (e.g., the borrower is not more than 60 days delinquent in child support payments, not proposed or presently excluded from participation in this transaction by any federal department or agency, has no potential for a conflict of interest due to an owner being a current or former SBA employee, a Member of Congress, or a SCORE volunteer), and, among other disclosures, the firm's existing number of employees, the number of jobs to be created as a result of the loan, and the number of jobs that will be retained as a result of the loan that would have otherwise been lost.[50]
- *Form 912: Statement of Personal History*. SBA form 912 is required if the borrower reports on Form 1919 an arrest in the past six months for a criminal offense or had ever been convicted, plead guilty, plead nolo contender, been placed on pretrial diversion, or been placed on any form of parole or probation (including probation before judgment) of any criminal offense.[51] Form 912

[47] If the PLP lender indicates that the loan is eligible to be processed under the PLP lender's delegated authority, the lender is also certifying that SBA Form 1920 has been completed, signed, dated, and filed in the loan file.

[48] SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 187, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[49] Ibid., p. 181.

[50] SBA, "SBA Form 1919: Borrower Information Form for use with all 7(a) Programs," at https://www.sba.gov/sites/default/files/forms/SBA%201919_SSN_1.PDF.

[51] SBA, "SBA Form 912: Statement of Personal History," at https://www.sba.gov/sites/default/files/forms/SBA%20%20Form%20912%20%202-13.pdf. The lender is required to process a background check and character determination if the borrower has been arrested in the past six months for any criminal offense or if the borrower has ever been convicted, plead guilty, plead nolo contender, been placed on pretrial diversion, or been placed on any form of parole or probation (including probation before judgment) of any criminal offense.

requires the borrower to furnish details concerning his or her offense(s) and authorizes the SBA's Office of Inspector General to request criminal record information about the applicant from criminal justice agencies for determining program eligibility. It must be dated within 90 days of the application's submission to the SBA.

- *Form 159: Fee Disclosure and Compensation Agreement.* SBA form 159 is required if the borrower reports on Form 1919 that he or she used (or intends to use) a packager, broker, accountant, lawyer, etc. to assist in preparing the loan application or any related materials.[52] SBA form 159 is also required if the lender retains the services of a packager, broker, accountant, lawyer, etc. to assist in preparing the loan application or any related materials. Form 159 provides identifying information about the packager, broker, accountant, lawyer, etc. and the fees paid to any such person.
- *Form 601: Agreement of Compliance* (prohibiting discrimination). SBA form 601 is required if the borrower reports on Form 1919 that more than $10,000 of the loan proceeds will be used for construction.[53] Form 601 certifies that the borrower will cooperate actively in obtaining compliance with Executive Order 11246, which prohibits discrimination on the basis of race, color, religion, sex, or national origin and requires affirmative action to ensure equality of opportunity in all aspects of employment related to federally assisted construction projects in excess of $10,000.
- *Form 1920: Lenders Application for Guaranty for all 7(a) Programs*.[54] SBA form 1920 provides identifying information about the lender; the loan type (standard, SBAExpress, Export Express, etc.); loan terms; use of proceeds; the business's size and information about affiliates, if any; the applicant's character; if credit is reasonably available elsewhere; the type of business; potential conflicts of interest; and other information such the number of jobs created or retained. PLP lenders complete the form and retain it in the loan file. Other lenders must submit this form electronically to the LGPC.
- *Verification of Alien Status*. Documentation of the U.S. Citizenship and Immigration Services (USCIS) status of each alien is required prior to submission of the application to the SBA.
- *Lender's Credit Memorandum*. For loans up to and including $350,000, the Lender's Credit Memorandum includes a brief description of the history of the business and its management; the debt service coverage ratio (net operating income compared to total debt service must be at least 1:1); statement that the lender has reconciled financial data (including seller's financial data) against IRS transcripts; an owner/guarantor analysis (including personal financial condition); lender's discussion of life insurance requirements; explanation and justification for any refinancing; analysis of credit, including lender's rationale for recommending approval; for a change of ownership, discussion/analysis of

[52] SBA, "SBA Form 159: Fee Disclosure and Compensation Agreement," at https://www.sba.gov/sites/default/files/forms/SBA_159_7a.pdf.

[53] SBA, "SBA Form 601: Agreement of Compliance," at https://www.sba.gov/sites/default/files/forms/SBA%20601.pdf.

[54] SBA, "SBA Form 1920: Lenders Application for Guaranty for all 7(a) Programs," at https://www.sba.gov/sites/default/files/forms/SBA%201920_1.pdf.

business valuation and how the change benefits the business; discussion of any liens, judgments or bankruptcy filings; and discussion of any other relevant information. For loans exceeding $350,000, the Lender's Credit Memorandum must also include an analysis of collateral and a financial analysis which includes an analysis of the historical financial statements; defining assumptions supporting projected cash flow; and, when used, spread of pro-forma balance sheet, ratio calculations, and working capital analysis.[55]

- *Cash Flow Projections*. A projection of the borrower's cash flow, month-by-month for one year, is required for all new businesses, and when otherwise applicable.

The following forms and documentation are also required for 7(a) standard loans exceeding $350,000:

- *Form 413: Personal Financial Statement*. SBA form 413 provides detailed information concerning the applicant's assets and liabilities and must be dated within 90 days of submission to the SBA, on all owners of 20% or more (including the assets of the owner's spouse and any minor children), and proposed guarantors. Lenders may substitute their own Personal Financial Statement form.
- *Form 1846: Statement Regarding Lobbying*. SBA Form 1846 must be signed and dated by lender.[56] It indicates that if any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, Member of Congress, an officer or employee of Congress, or an officer or employee of a Member of Congress in connection with this commitment, the lender will complete and submit a Standard Form LLL "Disclosure of Lobbying Activities."[57]
- A copy of *Internal Revenue Service (IRS) Form 4506-T, Request for Copy of Tax Return*. Lenders must identify the date IRS Form 4506-T was sent to the IRS. For non-delegated lenders, verification of IRS Form 4506-T is required prior to submission of the application to the SBA. For PLP and express lenders, verification of IRS Form 4506-T is required prior the first disbursement.
- *Business Financial Statements* and/or tax returns dated within 180 days of the application's submission to the SBA, consisting of (1) year-end balance sheets for the last three years, (2) year-end profit and loss statements for the last three years, (3) reconciliation of net worth, (4) interim balance sheet, and (5) interim profit and loss statements.
- *Affiliate and Subsidiary Financial Statements* and/or tax returns dated within 180 days of the application's submission to the SBA, consisting of (1) year-end balance sheets for the last three years, (2) year-end profit and loss statements for the last three years, (3) reconciliation of net worth, (4) interim balance sheet, and (5) interim profit and loss statements.

[55] SBA, "Standard 7(a) LGPC 10-Tab Submission Instructions," at https://www.sba.gov/sites/default/files/files/LGPC%2010-Tab%20Template_20140313.pdf.

[56] SBA, "SBA Form 1846: Statement Regarding Lobbying," at https://www.sba.gov/sites/default/files/forms/bank_sba1846.pdf.

[57] U.S. Office of Management and Budget, "Standard Form LLL: Disclosure of Lobbying Activities," at https://www.whitehouse.gov/sites/default/files/omb/grants/sflllin.pdf.

- A copy of the *Lease Agreement*, if applicable.
- A detailed *Schedule of Collateral*.[58]
- A detailed *List of M&E* (machinery and equipment) being purchased with SBA loan proceeds, including cost quotes.
- If real estate is to be purchased with the loan proceeds, a *Real Estate Appraisal*, *Environmental Investigation Report* questionnaire, a cost breakdown, and copy of any *Real Estate Purchase Agreements*.
- If purchasing an existing business with loan proceeds, a (1) copy of buy-sell agreement, (2) copy of business valuation, (3) pro forma balance sheet for the business being purchased as of the date of transfer, (4) copy of the seller's financial statements for the last three complete fiscal years or for the number of years in business if less than three years, (5) interim statements no older than 180 days from date of submission to the SBA, and (6) if the seller's financial statements are not available, the seller must provide an alternate source of verifying revenues.
- An explanation of the type and source of applicant's equity injection. Proper evidence of a borrower's equity injection may include the copy of a check together with proof it was processed, or a copy of an escrow settlement sheet with a bank account statement showing the injection into the business prior to disbursement. A promissory note, "gift letter," or financial statement is generally not sufficient evidence.[59]
- If the borrower is a franchise, the lender must indicate that when entering the loan application into E-Tran or SBA One, submit SBA Form 2462 (Addendum to Franchise Agreement), and ensure that the applicant meets all SBA eligibility requirements, including those related to affiliation.[60]

SBA Guaranty and Servicing Fees

To offset its costs, the SBA is authorized to charge lenders an up-front, one-time guaranty fee and an annual, ongoing service fee for each 7(a) loan approved and disbursed.[61] The SBA's fees vary depending on loan amount and loan maturity. The maximum guaranty fee for 7(a) loans with maturities exceeding 12 months is set by statute and varies depending on the loan amount.[62] The fee is a percentage of the SBA guaranteed portion of the loan. On short-term loans (maturities of less than 12 months), the lender must submit the guaranty fee to the SBA with the application for

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[58] For loans of up to $350,000, if a schedule of collateral is not included, the lender must provide collateral and lienholder information to the Standard 7(a) Loan Guaranty Processing Center to complete the loan authorization.

[59] SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 154, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[60] Ibid., pp. 81-82.

[61] P.L. 93-386, the Small Business Amendments of 1974, provided the SBA authorization to charge fees to "cover administrative expenses and probable losses" on its loan guaranty programs.

[62] P.L. 108-447, the Consolidated Appropriations Act, 2005 (Division K–Small Business, Section 102. Loan Guaranty Fees) established the SBA's current maximum up-front guaranty fees as: up to 2% of the SBA guaranteed portion of 7(a) loans of $150,000 or less, up to 3% of the SBA guaranteed portion of 7(a) loans exceeding $150,000 but not more than $700,000, and up to 3.5% of the SBA guaranteed portion of 7(a) loans exceeding $700,000. In addition, 7(a) loans with an SBA guaranteed portion in excess of $1 million can be charged an additional 0.25% guaranty fee on the guaranteed amount in excess of $1 million. See 15 U.S.C. §636(a)(18)(a); and SBA, "Small Business Jobs Act: Implementation of Conforming and Technical Amendments," 76 *Federal Register* 63544-63545, October 13, 2011.

guaranty. The application will not be processed without the fee. On loans with maturities in excess of 12 months, the lender must pay the guaranty fee to the SBA within 90 days of the date of loan approval. Lenders may charge the borrower for the fee after the lender has made the first disbursement of the loan. Lenders are permitted to retain 25% of the guaranty fee on loans with a gross amount of $150,000 or less.[63]

The annual service fee cannot exceed 0.55% of the outstanding balance of the SBA's share of the loan and is required to be no more than the "rate necessary to reduce to zero the cost to the Administration" of making guaranties.[64] The lender's annual service fee to the SBA cannot be charged to the borrower.[65]

In an effort to assist small business owners, the SBA

- waived its annual service fee for all 7(a) loans of $150,000 or less approved in FY2014, FY2015, and FY2016 (this fee was increased to 0.546% for FY2017);
- waived the up-front, one-time guaranty fee for all 7(a) loans of $150,000 or less approved in FY2014, FY2015, FY2016, and is waiving this fee in FY2017; and
- reduced its annual service fee for all other 7(a) loans from 0.55% in FY2013 to 0.52% in FY2014, 0.519% in FY2015, and 0.473% in FY2016 (this fee was increased to 0.546% for FY2017).[66]

Table 1 shows the annual service fee and guaranty fee for 7(a) loans to non-veterans in FY2017. The annual service fee is a percentage of the outstanding balance of the SBA's share of the loan. The guaranty fee is a percentage of the SBA guaranteed portion of the loan. Because the guaranty fee for loans of $150,000 or less is currently zero, lenders may not charge a guaranty fee for these loans to the borrower.[67]

As mentioned previously, the SBA waived its up-front, one-time guaranty fee for all veteran loans under the 7(a) SBAExpress program (up to $350,000) from January 1, 2014, through the end of FY2015. P.L. 114-38, the Veterans Entrepreneurship Act of 2015, made this 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

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[63] SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 133, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf. The guaranty fee is refundable if the loan application is withdrawn prior to SBA approval, the SBA declines to guarantee the loan, or the SBA substantially changes the loan terms and those terms are unacceptable to the lender. Also, because the SBA does not approve or decline the credit for PLP loans, PLP lenders are required to send the guaranty fee electronically to http://www.pay.gov within 10 business days from the date the loan number is assigned and before the lender signs the Authorization for the SBA. For SBA Express and Export Express loans with a maturity of 12 months or less, the lender does not send the fee to the processing center with the request for loan number. The lender must pay the guaranty fee within 10 business days from the date the loan number is assigned and before the lender signs the Authorization for SBA.

[64] 15 U.S.C. §636(a)(23)(a).

[65] 15 U.S.C. §636(a)(23)(b).

[66] SBA, "SBA Information Notice: 7(a) and 504 Fees Effective on October 1, 2013," at https://www.sba.gov/sites/default/files/5000-1288.pdf; SBA, "SBA Information Notice: 7(a) and 504 Fees Effective October 1, 2014," at https://www.sba.gov/sites/default/files/lender_notices/5000-1318.pdf; SBA, "SBA Information Notice: 7(a) and 504 Fees Effective on October 1, 2015," at https://www.sba.gov/sites/default/files/lender_notices/5000-1352.pdf; and SBA, "SBA Information Notice: 7(a) and 504 Fees Effective October 1, 2016," at https://www.sba.gov/sites/default/files/lender_notices/5000-1389.fees_for_FY_2017.pdf.

[67] SBA, "SBA Information Notice: 7(a) and 504 Fees Effective October 1, 2016," at https://www.sba.gov/sites/default/files/lender_notices/5000-1389.fees_for_FY_2017.pdf.

this fee in FY2016, and is waiving it in FY2017, because the President's budget indicated that the 7(a) program did not need a credit subsidy in FY2016 and FY2017.

Table 1. SBA Annual Service and Guaranty Fees (non-veterans), FY2017

Maturity and Gross Loan Amount	Annual Service Fee	Guaranty Fee
12 months or less and $150,000 or less	0.546%	0.00%
12 months or less and $150,001 to $5,000,000	0.546%	0.25%
Exceeding 12 months and $150,000 or less	0.546%	0.00%
Exceeding 12 months and $150,001 to $700,000	0.546%	3.00%
Exceeding 12 months and $700,001 to $5,000,000	0.546%	3.5% up to $1 million and 3.75% of the guaranteed portion over $1 million

Source: U.S. Small Business Administration, "SBA Information Notice: 7(a) and 504 Fees Effective October 1, 2016," at https://www.sba.gov/sites/default/files/lender_notices/5000-1389.fees_for_FY_2017.pdf.

Notes: If two or more SBA guaranteed loans are approved within 90 days of each other, the guaranty fee is determined based on the aggregate amount of the loans. Lenders are not permitted to split loans for the purpose of avoiding fees.

The SBA also waived 50% of the up-front, one-time guaranty fee on all non-SBAExpress 7(a) loans of $150,001 to $5 million for veterans in FY2015 and FY2016; and is waiving 50% of the up-front, one-time guaranty fee on all non-SBAExpress 7(a) loans of $150,001 to $500,000 for veterans in FY2017.

The Obama Administration argued that fee waivers for 7(a) loans of $150,000 or less were necessary because the demand for smaller 7(a) loans had fallen and the waiver reduction "can be achieved with zero credit subsidy appropriations" because the "annual fees for larger 7(a) loans will cover the cost for those smaller loans."[68] The Administration also contended that waiving the fees on smaller SBA loans would "promote lending to small businesses that face the most constraints on credit access."[69]

For context, 7(a) loans of $150,000 or less accounted for about 11.8% of the total amount of 7(a) loan approvals in FY2010 ($1.46 billion of $12.41 billion); 8.3% in FY2011 ($1.63 billion of $19.64 billion); 9.5% in FY2012 ($1.44 billion of $15.15 billion); 8.1% in FY2013 ($1.45 billion of $17.87 billion); 9.7% in FY2014 ($1.86 billion of $19.19 billion); 9.7% in FY2015 ($2.28 billion of $23.58 billion); and 9.4% in FY2016 ($2.75 billion of $24.13 billion).[70]

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[68] SBA, *Fiscal Year 2014 Congressional Budget Justification and FY 2012 Annual Performance Report*, p. 36.

[69] U.S. Office of Management and Budget, *Budget of the United States Government, Fiscal Year 2014: Small Business Administration*, p. 164, at https://www.whitehouse.gov/sites/default/files/omb/budget/fy2014/assets/business.pdf.

[70] SBA, "SBA Lending Statistics for Major Programs (as of 9/30/2016)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_Lending_Statistics_for_Major_Programs_as_of_09-30-2016.pdf.

The SBA also announced that eliminating guaranty fees for 7(a) loans of $150,000 or less is part of its broader effort to "reduce barriers, attract new lenders, grow loan volumes of existing lenders and improve access to capital for small businesses and entrepreneurs."[71]

Some in Congress have questioned whether it is appropriate to require borrowers of larger 7(a) loans to, in effect, subsidize borrowers of smaller 7(a) loans, who might be direct competitors. They have suggested that it might be more appropriate to reduce fees across-the-board without regard to loan size.[72]

Lender Packaging, Servicing, and Other Fees

The lender may charge an applicant "reasonable fees" customary for similar lenders in the geographic area where the loan is being made for packaging and other services. The lender must advise the applicant in writing that the applicant is not required to obtain or pay for unwanted services. These fees are subject to SBA review at any time, and the lender must refund any such fee considered unreasonable by the SBA.[73]

The lender may also charge an applicant an additional fee if, subject to prior written SBA approval, all or part of a loan will have extraordinary servicing needs. The additional fee cannot exceed 2% per year on the outstanding balance of the part requiring special servicing (e.g., field inspections for construction projects). The lender may also collect from the applicant necessary out-of-pocket expenses, including filing or recording fees, photocopying, delivery charges, collateral appraisals, environmental impact reports that are obtained in compliance with SBA policy, and other direct charges related to loan closing.[74] The lender is prohibited from requiring the borrower to pay any fees for goods and services, including insurance, as a condition for obtaining an SBA guaranteed loan, and from imposing on SBA loan applicants processing fees, origination fees, application fees, points, brokerage fees, bonus points, and referral or similar fees.[75]

The lender is also allowed to charge the borrower a late payment fee not to exceed 5% of the regular loan payment when the borrower is more than 10 days delinquent on its regularly scheduled payment. The lender may not charge a fee for full or partial prepayment of a loan.[76]

For loans with a maturity of 15 years or longer, the borrower must pay to the SBA a subsidy recoupment fee when the borrower voluntarily prepays 25% or more of its loan in any 1 year during the first 3 years after first disbursement. The fee is 5% of the prepayment amount during the first year, 3% in the second year, and 1% in the third year.[77]

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[71] SBA, *FY 2014 Congressional Budget Justification and FY 2012 Annual Performance Report,* p. 4.

[72] For example, see Barry Pineles, Chief Counsel, House Committee on Small Business, "Hearing Memorandum on The Budget Outlook for Small Business Administration," April 18, 2013, pp. 11-12, at http://smallbusiness.house.gov/uploadedfiles/revised_hearing_memo_4-24-2013.pdf.

[73] 13 C.F.R. §120.221.

[74] Ibid.; and SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 141, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[75] 13 C.F.R. §120.222. A commitment fee may be charged for a loan made under the Export Working Capital Loan Program.

[76] 13 C.F.R. §120.221; and SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), pp. 137, 141, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[77] 13 C.F.R. §120.223; and SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), pp. 137, 141, at https://www.sba.gov/sites/default/files/sops/
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Program Statistics

Loan Volume

As shown in **Table 2**, the total number and amount of SBA 7(a) loans approved (before and after full cancellations) declined in FY2008 and FY2009, increased during FY2010 and FY2011, declined somewhat in FY2012, and have increased since then. The number and amount of 7(a) loans approved annually is higher than the number and amount of loans disbursed after full cancellations because some borrowers decide not to accept the loan for a variety of reasons, such as they were able to secure financing elsewhere, the funds are no longer needed, or there was a change in business ownership.

The SBA attributed the decreased number and amount of 7(a) loans approved in FY2008 and FY2009 to a reduction in the demand for small business loans resulting from the economic uncertainty of the recession (December 2007-June 2009) and to tightened loan standards imposed by lenders concerned about the possibility of higher loan default rates resulting from the economic slowdown. The SBA attributed the increased number of loans approved in FY2010 and FY2011 to legislation that provided funding to temporarily reduce the 7(a) program's loan fees and temporarily increase the 7(a) program's loan guaranty percentage to 90% for all standard 7(a) loans from up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000.[78]

Table 2. 7(a) Loan Guaranty Program, Loan Volume, FY2007-FY2016

FY	Number of Loans Approved	Number of Loans Approved After Full Cancellations	Amount Approved ($ in billions)	Amount Approved After Full Cancellations ($ in billions)	Total Unpaid Principal Balance ($ in billions)
2007	99,607	88,270	$14.29	$12.57	$46.08
2008	69,437	61,661	$12.67	$11.07	$47.69
2009	41,274	36,651	$9.18	$8.09	$48.56
2010	46,921	39,872	$12.32	$10.02	$50.85
2011	53,692	45,725	$19.62	$16.15	$56.44
2012	44,357	39,157	$15.13	$13.34	$60.08
2013	46,386	40,774	$17.86	$15.60	$63.67
2014	52,044	46,911	$19.19	$17.03	$68.19
2015	63,460	57,131	$23.58	$21.61	$73.02
2016	64,073	60,642	$24.13	$22.50	$78.79

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SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

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

Sources: U.S. Small Business Administration, "Correspondence with the author," December 7, 2016; U.S. Small Business Administration, "SBA Lending Statistics for Major Programs (as of 9/30/2016)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_Lending_Statistics_for_Major_Programs_as_of_09-30-2016.pdf; and U.S. Small Business Administration, "Table 1—Unpaid Principal Balance By Program," at https://www.sba.gov/sites/default/files/files/WDS_Table1_UPB_Report.pdf.

Notes: The 7(a) program's authorization limit on disbursements was $17.5 billion in FYs 2007-2013 (P.L. 109-289, P.L. 110-161, P.L. 111-8, P.L. 111-117, P.L. 112-10, P.L. 112-74, and P.L. 112-175); initially $17.5 billion and later increased to $18.5 billion in FY2014 (P.L. 113-164); initially $18.75 billion (P.L. 113-235) and later increased to $23.5 billion in FY2015 (P.L. 114-38); and $26.5 billion in FY2016 (P.L. 114-113). P.L. 114-223 authorizes the SBA to use funds from its business loan program account "to accommodate increased demand for commitments for general business loans" authorized under section 7(a) of the Small Business Act for the duration of the continuing resolution (initially December 9, 2016, later extended by P.L. 114-254 to April 28, 2017).

The fee subsidies and 90% loan guaranty percentage were in place during most of FY2010 and the first quarter of FY2011.[79] The increased number and amount of 7(a) loans approved since FY2012 are generally attributed to improving economic conditions.[80]

Table 2 also provides, for comparison purposes, the total amount of the 7(a) program's unpaid principal balance by fiscal year. Precise measurements of the total credit market for small businesses are not available. However, the SBA has estimated that the credit market for small businesses (outstanding bank loans of $1 million or less, plus credit extended by finance companies and other sources) is roughly $1.2 trillion.[81] The 7(a) program's unpaid principal balance was about $78.79 billion at the end of FY2016, or about 6.5% of that amount.[82]

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[79] P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (ARRA), enacted on February 17, 2009, provided the SBA $375 million to temporarily reduce fees in the 7(a) and 504/CDC loan guaranty programs, and increase the 7(a) program's maximum loan guaranty percentage to 90% for all standard 7(a) loans through September 30, 2010, or until available funds were exhausted. Due to the increased demand for 7(a) loans, available funding was anticipated to be exhausted in early January 2010. 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. The fee subsidies and 90% loan guaranty percentage expired on May 31, 2010. P.L. 111-240, the Small Business Jobs Act of 2010, enacted on September 27, 2010, provided the SBA $505 million (plus an additional $5 million for related administrative expenses) to reinstate the fee subsidies and 90% maximum loan guaranty percentage through December 31, 2010, or until available funds were exhausted. P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the SBA to use any funds remaining from the Small Business Jobs Act of 2010 to continue the fee subsidies and the 7(a) program's 90% maximum loan guaranty percentage through March 4, 2011, or until the available funding was exhausted. The funds were exhausted on January 3, 2011.

[80] A small portion of the increase in FY2013 may also have been a result of an increase in 7(a) loan applications during the final two weeks of FY2013 as borrowers and lenders anticipated a possible federal government shutdown starting on October 1, 2013 (the first day of FY2014). See J.D. Harrison, "Shutdown yields slowdown: SBA returns to hundreds of small-business loans," *The Washington Post*, October 18, 2013. Prior to September 13, 2013, the SBA approved, on average, about 857 loans totaling $320,787 per week during FY2013 (42,851 loan approvals totaling $16,039,363 as of September 13, 2013, the 50th week of the fiscal year). The SBA approved 3,548 loans totaling $1,828,918 during the final two weeks (and a day) of FY2013. See SBA, "SBA Lending Statistics for Major Programs (as of 9/13/2013, 9/20/2013, 9/27/2013, 9/30/2013, and 9/30/2014)," at https://www.sba.gov/about-sba/sba-newsroom/weekly-lending-report. The federal government shutdown subsequently occurred on October 1, 2013, and continued through October 16, 2013.

[81] SBA, Office of Advocacy, "Frequently Asked Questions About Small Business Finance," July 2016, at https://www.sba.gov/sites/default/files/Finance-FAQ-2016_WEB.pdf.

[82] SBA, "Table 1 ─ Unpaid Principal Balance By Program," at https://www.sba.gov/sites/default/files/files/WDS_Table1_UPB_Report.pdf.

Appropriations for Loan Subsidy Costs

One of the SBA's goals is to achieve a zero subsidy rate for its loan guaranty programs. A zero subsidy rate occurs when the SBA's loan guaranty programs generate sufficient revenue through fee collections and recoveries of collateral on purchased (defaulted) loans to not require appropriations to issue new loan guarantees. From 2005 to 2009, the SBA did not request appropriations to subsidize the cost of any of its loan guaranty programs, including the 7(a) program. However, as indicated in **Table 3**, loan guaranty fees and loan liquidation recoveries did not generate enough revenue to cover loan losses in the 7(a) loan guaranty program from FY2010 through FY2013 and in the 504/CDC loan guaranty program from FY2012 through FY2015. Appropriations were provided to address the shortfalls.

Congress did not approve appropriations for 7(a) and 504/CDC loan guaranty program credit subsidies for FY2016 and FY2017 because the Obama Administration indicated that those programs did not require appropriations for credit subsidies in FY2016 and FY2017.[83]

Table 3. Business Loan Credit Subsidies, 7(a) and 504/CDC Loan Guaranty Programs, FY2007-FY2017

($ in millions)

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

Sources: U.S. Small Business Administration, FY2011 Congressional Budget Justification and FY2009 Annual Performance Report, p. 19; U.S. Small Business Administration, FY2012 Congressional Budget Justification and FY2010 Annual Performance Report, p. 22; U.S. Small Business Administration, FY2013 Congressional Budget Justification and FY2011 Annual Performance Report, p. 19; U.S. Small Business Administration, FY2014 Congressional Budget Justification and FY2012 Annual Performance Report, p. 25; U.S. Small Business Administration, FY2015 Congressional Budget Justification and FY2013 Annual Performance Report, p. 24; P.L. 113-235, the Consolidation and Further Continuing Appropriations Act, 2015; U.S. Small Business Administration, FY2016 Congressional Budget Justification and FY2014 Annual Performance Report, p. 16; U.S. Small Business Administration, FY2017 Congressional Budget Justification and FY2015 Annual Performance Report, p. 14; P.L. 114-53, the Continuing Appropriations Act, 2016; and P.L. 115-31, the Consolidated Appropriations Act, 2017.

Notes: The Microloan program also receives a credit subsidy, primarily for providing below market interest rates to Microloan intermediaries. The subsidies were $1.3 million in FY2007, $2.0 million in FY2008, $2.5

[83] SBA, *FY 2016 Congressional Budget Justification and FY 2014 Annual Performance Report*, p. 16; and SBA, *FY 2017 Congressional Budget Justification and FY 2015 Annual Performance Report*, p. 14.

million in FY2009, $3.0 million in FY2010 and FY2011, $3.678 million in FY2012, $3.498 million (after sequestration) in FY2013, $4.6 million in FY2014, $2.5 million in FY2015, and $3.338 million in FY2016 and FY2017 (under the continuing resolution).

Administrative Expenses

In FY2015, the SBA spent $63.0 million on the 7(a) program for administrative expenses, including $37.7 million for loan making, $6.0 million for loan servicing, and $19.3 million for loan liquidation. Also, the SBA spent $29.8 million on lender oversight, including oversight of 7(a) lenders. The SBA anticipates that 7(a) program administrative expenses will be about $66.0 million in FY2016, and about $31.3 million for lender oversight of the SBA's various lending programs.[84]

Use of Proceeds and Borrower Satisfaction

In 2008, the Urban Institute released the results of an SBA-commissioned study of the SBA's loan guaranty programs. As part of its analysis, the Urban Institute surveyed a random sample of SBA loan guaranty borrowers. The survey indicated that borrowers used 7(a) loan proceeds to

- purchase or install new equipment (34%);
- finance working capital (23%);
- acquire original business (21%);
- other (19%);
- expand or renovate current building (14%);
- purchase new building (10%);
- refinance existing debt (8%);
- hire additional staff (6%);
- build new building (4%);
- purchase new land (3%); and
- improve land (2%).[85]

The Urban Institute also reported that most of the 7(a) borrowers responding to the survey rated their overall satisfaction with their 7(a) loan and loan terms as either excellent (18%) or good (50%). One out of every five 7(a) borrowers (20%) rated their overall satisfaction with their 7(a) loan and loan terms as fair, and 6% rated their overall satisfaction with their 7(a) loan and loan terms as poor (7% reported don't know or did not respond).[86] In addition, 90% of the survey's respondents reported that the 7(a) loan was either very important (62%) or somewhat important (28%) to their business success (2% reported somewhat unimportant, 3% reported very unimportant, and 4% reported don't know or did not respond).[87]

[84] Ibid., p. 24.

[85] Christopher Hayes, *An Assessment of Small Business Administration Loan and Investment Performance: Survey of Assisted Businesses* (Washington, DC: The Urban Institute, 2008), p. 3, at http://www.urban.org/UploadedPDF/411599_assisted_business_survey.pdf. The percentage total exceeds 100 because recipients were allowed to name more than one use for the loan proceeds.

[86] Ibid., p. 5.

[87] Ibid.

Borrower Demographics

The Urban Institute found that about 9.9% of conventional small business loans are issued to minority-owned small businesses, and about 16% of conventional small business loans are issued to women-owned businesses.[88] In FY2016, 30.3% of 7(a) loan approvals ($7.30 billion of $24.13 billion) were to minority-owned businesses (21.9% Asian, 5.6% Hispanic, 2.2% African-American, and 0.6% American Indian) and 14.0% ($3.37 billion of $24.13 billion) were to women-owned businesses.[89] From its comparative analysis of conventional small business loans and the SBA's loan guaranty programs, the Urban Institute concluded:

> SBA's loan programs are designed to enable private lenders to make loans to creditworthy borrowers who would otherwise not be able to qualify for a loan. As a result, there should be differences in the types of borrowers and loan terms associated with SBA-guaranteed and conventional small business loans.
>
> Our comparative analysis shows such differences. Overall, loans under the 7(a) and 504 programs were more likely to be made to minority-owned, women-owned, and start-up businesses (firms that have historically faced capital gaps) as compared to conventional small business loans. Moreover, the average amounts for loans made under the 7(a) and 504 programs to these types of firms were substantially greater than conventional small business loans to such firms. These findings suggest that the 7(a) and 504 programs are being used by lenders in a manner that is consistent with SBA's objective of making credit available to firms that face a capital opportunity gap.[90]

Congressional Issues

Access to Capital

Congressional interest in the 7(a) loan program has increased in recent years largely because of concerns that small businesses might be prevented from accessing sufficient capital to enable them to assist in the economic recovery. During the 110th and 111th Congresses, several laws were enacted to increase the supply and demand for capital for both large and small businesses.[91] For example, in 2008, Congress adopted P.L. 110-343, the Emergency Economic Stabilization Act of 2008, which authorized the Troubled Asset Relief Program (TARP). Under TARP, the U.S. Department of the Treasury was authorized to purchase or insure up to $700 billion in troubled assets, including small business loans, from banks and other financial institutions. The law's intent was "to restore liquidity and stability to the financial system of the United States."[92] P.L. 111-203, the Dodd-Frank Wall Street Reform and Consumer Protection Act, reduced total TARP purchase authority from $700 billion to $475 billion. The Treasury Department's authority to

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

[89] SBA, "SBA Lending Statistics for Major Programs (as of 9/30/2016)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_Lending_Statistics_for_Major_Programs_as_of_09-30-2016.pdf.

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

[91] For further analysis, see CRS Report R40985, *Small Business: Access to Capital and Job Creation*, by Robert Jay Dilger.

[92] P.L. 110-343, the Emergency Economic Stabilization Act of 2008.

make new financial commitments under TARP ended on October 3, 2010. The Department of the Treasury has disbursed approximately $430 billion in TARP funds, including $370 million to purchase SBA 7(a) loan guaranty program securities.[93]

In addition, as mentioned previously, in 2009, ARRA provided an additional $730 million for SBA programs, including $375 million to temporarily reduce fees in the SBA's 7(a) and 504/CDC loan guaranty programs and increase the 7(a) program's maximum loan guaranty percentage from up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000 to 90% for all standard 7(a) loans. Congress subsequently provided another $265 million, and authorized the SBA to reprogram another $40 million, to extend the fee reductions and loan modification through May 31, 2010, and the Small Business Jobs Act of 2010 provided another $505 million (plus $5 million for administrative expenses) to extend the fee reductions and loan modification from September 27, 2010, through December 31, 2010. Also, P.L. 111-322, the Continuing Appropriations and Surface Transportation Extensions Act, 2011, authorized the use of any funding remaining from the Small Business Jobs Act of 2010 to extend the fee subsidies and 90% maximum loan guaranty percentage through March 4, 2011, or until the available funding was exhausted.[94] Funding for these purposes was exhausted on January 3, 2011.

The Obama Administration argued that TARP and the additional funding for the SBA's loan guaranty programs helped to improve the small business lending environment and supported "the retention and creation of hundreds of thousands of jobs."[95] Critics argued that small business tax reduction, reform of financial credit market regulation, and federal fiscal restraint are the best means to assist small business economic growth and job creation.[96]

Program Administration

Over the years, the SBA's Office of Inspector General (OIG) and the U.S. Government Accountability Office (GAO) have independently reviewed the SBA's administration of the

[93] U.S. Department of the Treasury, *Troubled Assets Relief Program Monthly Report–September 2015*, October 9, 2015, p. 5, at http://www.treasury.gov/initiatives/financial-stability/reports/Documents/September%202015%20Monthly%20Report%20to%20Congress.pdf. On March 16, 2009, President Obama announced that the Department of the Treasury would use TARP funds to purchase up to $15 billion of SBA-guaranteed loans to "immediately unfreeze the secondary market for SBA loans and increase the liquidity of community banks." The plan was deferred after it met resistance from lenders. Some lenders objected to TARP's requirement that participating lenders comply with executive compensation limits and issue warrants to the federal government. Smaller community banks objected to the program's paperwork requirements, such as the provision of a small-business lending plan and quarterly reports. See The White House, "Remarks by the President to Small Business Owners, Community Leaders, and Members of Congress," March 16, 2009, at https://www.whitehouse.gov/the_press_office/Remarks-by-the-President-to-small-business-owners/.

[94] P.L. 111-240, the Small Business Jobs Act of 2010, §1111. Section 7(A) Business Loans. The Senate had adopted H.R. 4213, the American Workers, State, and Business Relief Act of 2010, on March 10, 2010, by a 62-36 vote. It would have provided $560 million to extend the fee reductions and 90% loan guarantee limit through December 31, 2010. The House approved an amended version of the bill, renamed the American Jobs and Closing Tax Loopholes Act of 2010, on May 28, 2010, by a 245-171 vote. It would have provided $505 million to extend the fee reductions and 90% loan guarantee limit through December 31, 2010. The extension provision was subsequently removed from the bill, which became P.L. 111-205, the Unemployment Compensation Extension Act of 2010.

[95] SBA, "Administration Announces New Small Business Commercial Real Estate and Working Capital Programs," February 5, 2010, at http://www.illinois.gov/dceo/SmallBizAssistance/CenterConnect/WeeklyConnect/SBA%20Fact%20Sheet%20CRE%20REFI%20and%20WORKING%20CAPITAL.docx.

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

SBA's loan guaranty programs. Although improvements have been noted, both agencies have reported deficiencies in the SBA's administration of its loan guaranty programs that they argue need to be addressed, including issues involving the oversight of 7(a) lenders and the lack of outcome-based performance measures.

Oversight of 7(a) Lenders

On December 1, 2000, the OIG released its FY2001 list of the most serious management challenges facing the SBA and included, for the first time, the oversight of SBA lenders.[97] Since then, the OIG has determined that the SBA has made significant progress in improving its oversight of SBA lenders. For example,

- The SBA established an Office of Lender Oversight (renamed the Office of Credit Risk Management in 2007), led by an Associate Administrator, which, in October 2000, drafted a strategic plan to serve as a basis for developing a Standard Operating Procedure (SOP) for lender oversight and, among other activities, initiated "steps to develop and implement a comprehensive loan monitoring system to evaluate lender performance. The system will collect data on lenders such as delinquency default rates, liquidations, loan payments, and loan originations."[98]
- In 2004, the SBA's National Guaranty Purchase Center developed a quality control plan "to review the quality of the guaranty purchase process."[99]
- In 2006, the SBA issued an SOP that established procedures for on-site, risk-based lender reviews and safety and soundness examinations for 7(a) lenders and Certified Development Companies (CDCs) participating the SBA's 504/CDC loan guaranty program.[100]
- In 2007, the SBA completed the centralization of all 7(a) loan processing activities and, with very limited exception, ended loan making, servicing, liquidation, and guaranty purchase activity at district offices.[101]
- In 2008, the SBA issued an SOP for 7(a) lender oversight which included uniform policies and procedures for the evaluation of lender performance[102] and the SBA's Office of Financial Program Operations (OFPO) began designing "a comprehensive quality control program across all of its centers."[103] Previously,

[97] SBA, Office of Inspector General, "FY2001 Agency Management Challenges," December 1, 2000, pp. 15-17.

[98] Ibid., p. 17.

[99] SBA, Office of Inspector General, "Improvement is Needed to Ensure Effective Quality Control at Loan Operation Centers," January 17, 2014, p. 1, at https://www.sba.gov/sites/default/files/Audit%20Evaluation%20Report%2014-08%20Improvement%20is%20Needed%20to%20Ensure%20Effective%20Quality%20Control%20at%20Loan%20Operation%20Centers.pdf.

[100] SBA, Office of Lender Oversight, "SOP 51-00: On-Site Lender Reviews/Examinations," (effective September 28, 2006), at https://www.sba.gov/sites/default/files/sop_51-00-pdf.pdf. Note: Although on-site reviews are generally conducted on all 7(a) lenders with outstanding balances on the SBA-guaranteed portions of its loan portfolio amounting to $10 million or more, the SBA may conduct on-site reviews of any SBA lender, as it considers necessary.

[101] SBA, *FY 2009 Congressional Budget Justification and FY 2007 Annual Performance Report*, p. 37.

[102] SBA, Office of Financial Assistance, "SOP 50-10(5): Lender and Development Company Loan Programs," (effective August 1, 2008), at https://www.sba.gov/sites/default/files/sop_51-00-pdf.pdf.

[103] SBA, Office of Inspector General, "Improvement is Needed to Ensure Effective Quality Control at Loan Operation Centers," January 17, 2014, p. 15, at https://www.sba.gov/sites/default/files/Audit%20Evaluation%20Report%2014-08%20Improvement%20is%20Needed%20to%20Ensure%20Effective%20Quality%20Control%20at%20Loan%20Ope (continued...)

quality control was conducted within each loan center (Standard 7(a) Loan Guaranty Processing Center, Commercial Loan Service Center, and National Guaranty Purchase Center) "at various levels of sophistication."[104]

- The SBA issued an interim final rule in the *Federal Register* on December 1, 2008, incorporating the SBA's risk-based lender oversight program into the SBA's regulations.[105]
- In 2010, the SBA's OFPO established its agency-wide quality control program, which is designed to improve service and "reduce waste, fraud, and abuse" by ensuring "that centers accurately and consistently apply statutory, regulatory, and procedural loan program requirements."[106] The SBA also developed a "risk-based, off-site analysis of lending partners through its Loan/Lender Monitoring System (L/LMS), a state-of-the-art portfolio monitoring system that incorporates credit scoring metrics for portfolio management purposes."[107]
- In 2012-2013, the SBA "(1) developed risk profiles and lender performance thresholds, (2) developed a select analytical review process to allow for virtual risk-based reviews, (3) updated its lender risk rating model to better stratify and predict risk, and (4) conducted test reviews under the new risk-based review protocol."[108]
- In 2013-2014, the SBA "improved its monitoring and verification of corrective actions by lenders by: (1) developing corrective action assessment procedures, (2) finalizing a system to facilitate the corrective action process, and (3) populating the system with lender oversight results requiring corrective action."[109]

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[104] Ibid. The Standard 7(a) Loan Guaranty Processing Center, located in Citrus Heights, CA and Hazard, KY, processes 7(a) loan guaranty applications and conducts limiting servicing of 7(a) loans. The Commercial Loan Service Center, located in Fresno, CA and Little Rock, AR, is responsible for loan servicing actions (after loans are disbursed), SBAExpress loan purchases, and 504/CDC loan guaranty program liquidation. The National Guaranty Purchase Center, located in Herndon, VA, processes 7(a) guaranty purchase requests and conducts liquidation oversight.

[105] SBA, "Lender Oversight Program," 73 *Federal Register* 75498-75527, December 11, 2008.

[106] SBA, Office of Inspector General, "Improvement is Needed to Ensure Effective Quality Control at Loan Operation Centers," January 17, 2014, p. 3, at https://www.sba.gov/sites/default/files/Audit%20Evaluation%20Report%2014-08%20Improvement%20is%20Needed%20to%20Ensure%20Effective%20Quality%20Control%20at%20Loan%20Operation%20Centers.pdf. The quality control program is led in each center by a designated quality control specialist. Each center is tasked with establishing specific quality review activities and targets, and creating a center specific quality program guide to detail (1) the center's activities that require quality reviews, (2) the number of reviews required (daily or monthly) by type of transaction, (3) compliance goals, and (4) the required corrective action activities. See ibid, pp. 6, 16.

[107] SBA, *Fiscal Year 2011 Congressional Budget Justification and FY 2009 Annual Performance Report*, p. 6. According to the SBA, "The Loan/Lender Monitoring System focuses on 7(a) lenders, certified development companies and microloan intermediaries that pose the most risk to the SBA. In addition to overseeing lenders, the L/LMS provides policy, portfolio and program analysis. The Office of Credit Risk Management (OCRM) is divided into four teams: large lender oversight, small lender oversight, lender transaction, and program and policy analysis. The differentiation of lender oversight by lender size reflects the different forms of oversight needed for large lenders versus small lenders." See ibid., p. 43.

[108] SBA, Office of Inspector General, "Report on the Most Serious Management and Performance Challenges Facing the Small Business Administration In Fiscal Year 2015," October 17, 2014, p. 5, at https://www.sba.gov/sites/default/files/oig/SBA%20OIG%20Report%2015-01%20-%20FY%202015%20Management%20Challenges_0.pdf.

[109] Ibid.

- In 2015, the SBA's Office of Credit Risk Management (OCRM) "engaged contractor support to expand on its corrective action follow-up process. Additionally, OCRM issued its FY2015 Risk Management Oversight Plan, which included plans to conduct 170 corrective action reviews between 7(a) and 504 lenders."[110]
- In 2016, OCRM reported that it conducted 147 corrective action follow-up assessments, established performance measures and risk mitigation goals for the SBA's entire lending portfolio, and "conducted portfolio analyses of problem lenders with heavy concentrations in SBA 7(a) lending and sales on the secondary market."[111]

Despite these improvements, the OIG continues to list lender oversight as one of the most serious management challenges facing the SBA because it argues that several issues that it has identified in audits have not been fully addressed.[112] Specifically, the OIG reports in its FY2017 list of the most serious management challenges facing the SBA that the agency needs to "demonstrate that information from the portfolio risk management program is used to support risk based decisions and implement additional controls to mitigate risks in SBA loan programs, implement a loan agent registration system, including the issuance of a unique identifying number for each agent," and, especially for the 504/CDC program, "develop an effective method of disclosing and tracking loan agent involvement in SBA business loan programs."[113]

Outcome-Oriented Performance Measures

GAO has argued that the 7(a) program's performance measures (e.g., number of loans approved, loans funded, and firms assisted across the subgroups of small businesses) provide limited information about the impact of the loans on participating small businesses:

> The program's performance measures focus on indicators that are primarily output measures–for instance, they report on the number of loans approved and funded. But none of the measures looks at how well firms do after receiving 7(a) loans, so no

[110] SBA, Office of Inspector General, "Report on the Most Serious Management and Performance Challenges Facing the Small Business Administration In Fiscal Year 2016," October 15, 2015, p. 5, at https://www.sba.gov/sites/default/files/oig/FY_2016_Management_Challenges.pdf.

[111] SBA, Office of Inspector General, "Report on the Most Serious Management and Performance Challenges Facing the Small Business Administration In Fiscal Year 2017," October 14, 2016, pp. 8-9, at https://www.sba.gov/sites/default/files/oig/FY_2017_-_Management_Challenges_-_10_14_16_7.pdf.

[112] See SBA, Office of Inspector General, "Improvement is Needed to Ensure Effective Quality Control at Loan Operation Centers," January 17, 2014, at https://www.sba.gov/sites/default/files/Audit%20Evaluation%20Report%2014-08%20Improvement%20is%20Needed%20to%20Ensure%20Effective%20Quality%20Control%20at%20Loan%20Operation%20Centers.pdf; SBA, Office of Inspector General, "Improvement is Needed in SBA's Oversight of Lender Service Providers," at https://www.sba.gov/sites/default/files/oig/OIG_Report_15-06_Lender_Service_Providers.pdf; SBA, Office of Inspector General, "Significant Opportunities Exist to Improve the Management of the 7(a) loan Guaranty Approval Process," June 6, 2014, p. 2, at https://www.sba.gov/sites/default/files/%5Bc%5D%20Audit%20Report%2014-13.pdf; and SBA, Office of Inspector General, "SBA Needs to Improve its Oversight of Loan Agents," September 25, 2015, at https://www.sba.gov/sites/default/files/oig/Report_15-6_SBA_Needs_to_Improve_Its_Oversight_of_Loan_Agents.pdf.

[113] SBA, Office of Inspector General, "Report on the Most Serious Management and Performance Challenges Facing the Small Business Administration In Fiscal Year 2017," October 14, 2016, pp. 8-10, at https://www.sba.gov/sites/default/files/oig/FY_2017_-_Management_Challenges_-_10_14_16_7.pdf.

> information is available on outcomes. As a result, the current measures do not indicate how well the agency is meeting its strategic goal of helping small businesses succeed.[114]

The SBA's OIG has made a similar argument concerning the SBA's Microloan program's performance measures. Because the SBA uses similar program performance measures for its Microloan and 7(a) programs, the OIG's recommendations could also be applied to the SBA's 7(a) program.

Specifically, as part of its audit of the SBA Microloan program's use of ARRA funds, the OIG found that the SBA's performance measures for the Microloan program are based on the number of microloans funded, the number of small businesses assisted, and program's loan loss rate. It argued that these "performance metrics ... do not ensure the ultimate program beneficiaries, the microloan borrowers, are truly assisted by the program" and "without appropriate metrics, SBA cannot ensure the Microloan program is meeting policy goals."[115] It noted that the SBA does not track the number of microloan borrowers who remain in business after receiving a microloan to measure the extent to which the loans contributed to the success of borrowers and does not determine the effect that technical training assistance may have on the success of microloan borrowers and their ability to repay loans.[116] It recommended that the SBA "develop additional performance metrics to measure the program's achievement in assisting microloan borrowers in establishing and maintaining successful small businesses."[117]

In its response to GAO's recommendation to develop additional performance measures for the 7(a) program, the SBA indicated that there are legal constraints and cost considerations associated with tracking the success or failure of SBA borrowers and that it had, at that time, "a new administrator who may make changes to the agency's performance measures and goals."[118] In response to the OIG's recommendation to develop additional performance metrics for the Microloan program, the SBA reported that it had "contracted with the Aspen Institute to advise on appropriate program and performance metrics for both microloans and technical assistance grants."[119] More recently, the SBA indicated in its FY2017 congressional budget justification document that although it "continues to face barriers gathering outcome rich evaluation data with current restrictions in collecting personal identification information (PII) and business identification information (BII)" it "plans to further develop its analytical capabilities, enhance collaboration across its programs, provide evaluation-specific trainings, and broaden use of impact evaluations to support senior leaders and institutionalize the evidence-based process across programs."[120] As part of this effort, the SBA has formed an Impact Evaluation Working Group.

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[114] GAO, *Small Business Administration: 7(a) Loan Program Needs Additional Performance Measures*, GAO-08-226T, November 1, 2007, p. 2, at http://www.gao.gov/new.items/d08226t.pdf.

[115] SBA, Office of the Inspector General, *SBA's Administration of the Microloan Program under the Recovery Act*, December 28, 2009, p. 6, at https://www.sba.gov/sites/default/files/om10-10.pdf.

[116] Ibid.

[117] Ibid., p. 7.

[118] GAO, *Small Business Administration: 7(a) Loan Program Needs Additional Performance Measures*, GAO-08-226T, November 1, 2007, p. 8, at http://www.gao.gov/new.items/d08226t.pdf.

[119] SBA, Office of the Inspector General, *SBA's Administration of the Microloan Program under the Recovery Act*, December 28, 2009, p. 9, at https://www.sba.gov/sites/default/files/om10-10.pdf.

[120] SBA, *FY 2017 Congressional Budget Justification and FY 2015 Annual Performance Report*, p. 28.

Legislative Activity During the 111th Congress

Congress authorized several changes to the 7(a) program during the 111th Congress in an effort to increase the number and amount of 7(a) loans.

The Obama Administration's Proposals

During the 111th Congress, the Obama Administration supported congressional efforts to temporarily subsidize fees for the 7(a) and 504/CDC loan guaranty programs and to increase the 7(a) program's loan guaranty percentage from up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000 to 90%. Congress subsequently provided nearly $1.1 billion to temporarily subsidize fees for the 7(a) and 504/CDC loan guaranty programs and to increase the 7(a) program's maximum loan guaranty percentage to 90% for all standard 7(a) loans.

The Obama Administration also proposed the following modifications to several SBA programs, including the 7(a) program:

- increase the maximum loan size for 7(a) loans from $2 million to $5 million;
- increase the maximum loan size for the 504/CDC program from $2 million to $5 million for regular projects and from $4 million to $5.5 million for manufacturing projects;
- increase the maximum loan size for microloans to small business concerns from $35,000 to $50,000;
- increase the maximum loan limits for lenders in their first year of participation in the Microloan program, from $750,000 to $1 million, and from $3.5 million to $5 million in the subsequent years;
- temporarily increase the cap on SBAExpress loans from $350,000 to $1 million; and
- temporarily allow in FY2010 and FY2011, with an option to extend into FY2012, the refinancing of loans for owner-occupied commercial real estate that are within one year of maturity under the SBA's 504/CDC program.[121]

Arguments for Increasing the SBA's Maximum Loan Limits

The Obama Administration argued that increasing the maximum loan limits for the 7(a), 504/CDC, Microloan, and SBAExpress programs would allow the SBA to "support larger projects," which would "allow the SBA to help America's small businesses drive long-term economic growth and the creation of jobs in communities across the country."[122] The Administration also argued that increasing the maximum loan limits for these programs would be "budget neutral" over the long run and "help improve the availability of smaller loans."[123]

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[121] SBA, "Administration Announces New Small Business Commercial Real Estate and Working Capital Programs," February 5, 2010, at http://www.illinois.gov/dceo/SmallBizAssistance/CenterConnect/WeeklyConnect/SBA%20Fact%20Sheet%20CRE%20REFI%20and%20WORKING%20CAPITAL.docx.

[122] Ibid.

[123] Ibid.

Arguments Against Increasing the SBA's Maximum Loan Limits

Critics of the Obama Administration's proposals to increase the SBA's maximum loan limits argued that higher loan limits might increase the risk of defaults, resulting in higher guaranty fees or the need to provide the SBA additional funding, especially for the SBAExpress program, which has experienced somewhat higher default rates than other SBA loan guaranty programs.[124] Others advocated a more modest increase in the maximum loan limits to ensure that the 7(a) program "remains focused on startup and early-stage small firms, businesses that have historically encountered the greatest difficulties in accessing credit," and "avoids making small borrowers carry a disproportionate share of the risk associated with larger loans."[125]

Others argued that creating a small business direct lending program within the SBA would reduce paperwork requirements and be more efficient in providing small businesses access to capital than modifying existing SBA programs that rely on private lenders to determine if they will issue the loans.[126] Also, as mentioned previously, others argued that providing additional resources to the SBA or modifying the SBA's loan programs as a means to augment small business access to capital is ill-advised. In their view, the SBA has limited impact on small businesses' access to capital. They argued that the best means to assist small business economic growth and job creation is to focus on small business tax reduction, reform of financial credit market regulation, and federal fiscal restraint.[127]

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

As mentioned previously, in 2009, ARRA provided an additional $730 million for SBA programs, including $375 million to temporarily reduce fees in the SBA's 7(a) and 504/CDC loan guaranty programs ($299 million) and increase the 7(a) program's maximum loan guaranty percentage from up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000 to 90% for all standard 7(a) loans ($76 million).[128]

P.L. 111-240, the Small Business Jobs Act of 2010

P.L. 111-240 provided $505 million (plus $5 million for administrative expenses) to extend the 7(a) program's 90% maximum loan guaranty percentage and 7(a) and 504/CDC loan guaranty programs' fee subsidies through December 31, 2010 (later extended to March 4, 2011), or until

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

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

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

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

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

available funding was exhausted (which occurred on January 3, 2011). The act also made the following changes to the SBA's programs:

- increased the maximum loan size for 7(a) loans from $2 million to $5 million;
- temporarily increased for one year (through September 27, 2011) the cap on SBAExpress loans from $350,000 to $1 million;
- increased the maximum loan size for the 504/CDC loans from $1.5 million to $5 million for regular projects, from $2 million to $5 million for projects meeting one of the program's specified public policy goals, and from $4 million to $5.5 million for manufacturers;
- increased the maximum loan size for the Microloan program from $35,000 to $50,000;
- authorized the SBA to establish an alternative size standard for the 7(a) and 504/CDC programs that uses maximum tangible net worth and average net income as an alternative to the use of industry standards and established an interim size standard of a maximum tangible net worth of not more than $15 million and an average net income after federal taxes (excluding any carryover losses) for the preceding two fiscal years of not more than $5 million; and
- allowed 504/CDC loans to be used to refinance up to $7.5 billion in short-term commercial real estate debt each fiscal year for two years after enactment (through September 27, 2012) into long-term fixed rate loans.[129]

The act also authorized the Secretary of the Treasury to establish a $30 billion Small Business Lending Fund (SBLF) to encourage community banks to provide small business loans ($4 billion was issued), a $1.5 billion State Small Business Credit Initiative to provide funding to participating states with small business capital access programs, and about $12 billion in tax relief for small businesses.[130] It also contained revenue raising provisions to offset the act's cost and authorized a number of changes to other SBA loan and contracting programs.

Legislative Activity During the 112th Congress

Congress did not approve any changes to the 7(a) program during the 112th Congress. However, several bills were introduced during the 112th Congress that would have changed the program.

S. 1828, a bill to increase small business lending, and for other purposes, was introduced on November 8, 2011, and referred to the Senate Committee on Small Business and Entrepreneurship. The bill would have reinstated for a year following the date of its enactment the temporary fee subsidies for the 7(a) and 504/CDC loan guaranty programs and the 90% loan guaranty for standard 7(a) loans, which were originally authorized by ARRA and later extended by several laws, including the Small Business Jobs Act of 2010.

[129] P.L. 111-240, the Small Business Jobs Act of 2010, Section 1122. Low-Interest Refinancing Under the Local Development Business Loan Program.

[130] Further analysis of P.L. 111-240, the Small Business Jobs Act of 2010, is in CRS Report R41385, *Small Business Legislation During the 111th Congress* (available upon request from the author). For further analysis of the Small Business Lending Fund, see CRS Report R42045, *The Small Business Lending Fund*, by Robert Jay Dilger. For further analysis of the State Small Business Credit Initiative, see CRS Report R42581, *State Small Business Credit Initiative: Implementation and Funding Issues*, by Robert Jay Dilger.

H.R. 2936, the Small Business Administration Express Loan Extension Act of 2011, introduced on September 15, 2011, and referred to the House Committee on Small Business, would have extended a one-year increase in the maximum loan amount for the SBAExpress program from $350,000 to $1 million for an additional year. The temporary increase in that program's maximum loan amount was authorized by P.L. 111-240, the Small Business Jobs Act of 2010, and expired on September 27, 2011 (see **Appendix**).

S. 532, the Patriot Express Authorization Act of 2011, introduced on March 9, 2011, and referred to the Senate Committee on Small Business and Entrepreneurship, would have provided statutory authorization for the Patriot Express Pilot Program. This program was subsequently discontinued by the SBA on December 31, 2013. The bill would have increased the program's maximum loan amount from $500,000 to $1 million, and it would have increased the guaranty percentages from up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000 to up to 85% of loans of $500,000 or less and up to 80% of loans exceeding $500,000.

Legislative Activity During the 113th Congress

H.R. 2451, the Strengthening Entrepreneurs' Economic Development Act of 2013, was introduced on June 20, 2013, and referred to the House Committee on Small Business. It would have authorized the SBA to make direct loans of up to $150,000 to businesses with fewer than 20 employees. It would have also required the SBA to assess, collect, and retain a fee with respect to the outstanding balance of the deferred participation share of each 7(a) loan in excess of $2 million that is no more than is necessary to reduce to zero the SBA's cost of making the loan.

H.R. 2461, the SBA Loan Paperwork Reduction Act of 2013, was introduced on June 20, 2013, and referred to the House Committee on Small Business. It would have provided statutory authorization for the Small Loan Advantage (SLA) pilot program. The SBA started that program on February 15, 2011. It provided a streamlined application process for 7(a) loans of up to $350,000 if the loan received an acceptable credit score from the SBA prior to the loan being submitted for processing. The SBA adopted the SLA application process as the model for processing all non-express 7(a) loans of $350,000 or less, effective January 1, 2014.

As mentioned previously, the Obama Administration waived the up-front, one time loan guaranty fee and ongoing servicing fee for 7(a) loans of $150,000 or less approved in FY2014 (and later extended the fee waiver in FY2015 and FY2016). H.R. 2462, the Small Business Opportunity Acceleration Act of 2013, introduced on June 20, 2013, and referred to the House Committee on Small Business, would have made the fee waiver permanent.

Also, the Obama Administration waived the up-front, one-time loan guaranty fee for veteran loans under the SBAExpress program (up to $350,000) from January 1, 2014, through the end of FY2015 (called the Veterans Advantage Program). S. 2143, the Veterans Entrepreneurship Act, would have authorized this fee waiver and made it permanent. Also, P.L. 113-235 provided statutory authorization to waive the 7(a) SBAExpress program's guarantee fee for veterans (and their spouse) in FY2015.

Legislative Activity During the 114th Congress

P.L. 114-38, the Veterans Entrepreneurship Act of 2015, authorized and made permanent the waiver of the up-front, one-time loan guaranty fee for veterans (and their spouse) in the SBAExpress program beginning on or after October 1, 2015, 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.[131] The act also increased the 7(a) program's authorization limit from $18.75 billion in FY2015 to $23.5 billion.[132]

On June 25, 2015, the SBA informed Congress that the 7(a) program "is on track to hit its authorization ceiling of $18.75 billion well before the end of FY2015."[133] The SBA indicated that "our activity and trend analysis reveal a strong uptick that, if sustained, would exceed our lending authority ceiling by late August."[134] If that were to occur, and in the absence of statutory authority to do otherwise, the SBA reported that it would have to suspend 7(a) loan making for the remainder of the fiscal year. The SBA requested an increase in the 7(a) loan program's authorization limit to $22.5 billion in FY2015.[135]

On July 23, 2015, citing "unprecedented demand," the SBA suspended 7(a) program lending. The SBA indicated that it would continue to process loan applications "up to the point of approval" and then place approved loans "into a queue awaiting the availability of program authority."[136] Loans would be released "once program authority became available due to Congressional action or as a result of cancellations of loans previously approved this fiscal year."[137] Applications would then "be funded in the order they were approved by SBA, with the exception that requests for increases to previously approved loans will be funded before applications for new loans."[138]

The SBA resumed 7(a) lending on July 28, 2015, following P.L. 114-38's enactment.[139] In addition to increasing the 7(a) program's authorization limit for FY2015, the act added requirements designed to ensure that SBA loans do not displace private sector loans (e.g., the SBA Administrator may not guarantee a 7(a) loan if the lender determines that the borrower is unable to obtain credit elsewhere solely because the liquidity of the lender depends upon the guarantied portion of the loan being sold on the secondary market, or if the sole purpose for requesting the guarantee is to allow the lender to exceed the lender's legal lending limit), and requires the SBA to report, on a quarterly basis, specified 7(a) program statistics to the House and Senate Committees on Appropriations and Small Business. These required statistics are designed to inform the committees of the SBA's pace of 7(a) lending, provide estimates concerning the date on which the program's authorization limit may be reached, and present information concerning early defaults and actions taken by the SBA to combat early defaults.

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[131] U.S. Congress, House Committee on Small Business, *Veterans Entrepreneurship Act of 2015*, report to accompany H.R. 2499, 114th Cong., 1st sess., June 25, 2015, H.Rept. 114-187 (Washington: GPO, 2015), p. 9.

[132] Several bills have been introduced during the 114th Congress to increase the 7(a) program's authorization limit (on disbursements). For example, S. 1001, the Small Business Lending Reauthorization Act of 2015, would increase the 7(a) program's authorization limit from $18.75 billion in FY2015 to $20.5 billion in FY2015 and $23.5 billion in FY2016. H.R. 3132, to increase the amount of funding available for fiscal year 2015 for certain general business loans authorized under the Small Business Act, would increase the 7(a) program's authorization limit from $18.75 billion in FY2015 to $23.5 billion.

[133] Letter from Maria Contreras-Sweet, SBA Administrator, to The Honorable John Boozman, Chair, Subcommittee on Financial Services and General Government, House Committee on Appropriations, June 25, 2015, at https://www.sba.gov/sites/default/files/7a-authotization-cap-letter-Chairman_Boozman.pdf.

[134] Ibid.

[135] Ibid.

[136] SBA, "SBA Information Notice: 7(a) Loan Program Authorization Level," July 22, 2015, at https://www.sba.gov/sites/default/files/lender_notices/5000-1344.pdf.

[137] Ibid.

[138] Ibid.

[139] SBA, "SBA Information Notice: 7(a) Loan Program Authorization Level," July 28, 2015, at https://www.sba.gov/sites/default/files/lender_notices/5000-1346.pdf.

As mentioned previously, P.L. 114-113 increased the 7(a) program's authorization limit from $23.5 billion in FY2015 to $26.5 billion for FY2016. In addition, P.L. 114-223, the Continuing Appropriations and Military Construction, Veterans Affairs, and Related Agencies Appropriations Act, 2017, authorizes the SBA to use funds from its business loan program account "to accommodate increased demand for commitments for [7(a)] general business loans" for the duration of the continuing resolution (initially December 9, 2016, later extended by P.L. 114-254, the Further Continuing and Security Assistance Appropriations Act, 2017, to April 28, 2017).

In a related development, S. 2496, the Help Small Businesses Access Affordable Credit Act, introduced on February 2, 2016, would have authorized the SBA Administrator, with prior approval of the House and Senate Committees on Appropriations, to make loans in an amount equal to not more than 110% of the 7(a) program's authorization limit if the demand for 7(a) loans should exceed that limit. The Obama Administration also requested authorization to allow the SBA Administrator to continue to issue loans should the demand for 7(a) loans exceed the program's authorization limit.[140]

As mentioned previously, S. 2992, the Small Business Lending Oversight Act of 2016, would have required the Director of the SBA's Office of Credit Risk Management (OCRM) to impose penalties on 7(a) lenders who "knowingly and repeatedly" undertake specified activities;[141] required the SBA to annually undertake and report the findings of a risk analysis of the 7(a) program's loan portfolio; redefined the credit elsewhere requirement;[142] authorized fees to be

[140] U.S. Office of Management and Budget, *Budget of the United States Government, FY2017; Appendix – Small Business Administration,* p. 1223, at https://www.whitehouse.gov/sites/default/files/omb/budget/fy2017/assets/sba.pdf. See Section 521. For loans and loan guarantees that do not require budget authority and the program level has been established in this act, the Administrator of the Small Business Administration may increase the program level for such loans and loan guarantees by not more than 15 percent: Provided, That prior to the Administrator implementing such an increase, the Administrator notifies, in writing, the Committees on Appropriations and Small Business of both Houses of Congress at least 15 days in advance.

[141] The penalties " ... may include—(i) issuing the lender a warning and an order to comply; (ii) if the lender is a participant in the Preferred Lenders Program (in this subsection referred to as the `program'), as defined in section 7(a)(2)(C)(iii), suspending the lender from participating in the program for a period of not less than 90 days and not more than 1 year, which shall include the right of the lender to appeal the decision of the Director to the Office of Hearings and Appeals; (iii) prohibiting the lender from issuing loans under section 7(a), which shall include the right of the lender to appeal the decision of the Director to the Office of Hearings and Appeals; (iv) assessing a civil monetary penalty against the lender in an amount that is not less than $5,000 and not greater than $250,000, which shall include the right of the lender to appeal the decision of the Director to the Office of Hearings and Appeals; (v) prohibiting a lender from selling in the secondary market, under section 5(f), the guaranteed portion of any loan made by the lender; and (vi) any other penalty that the Director determines to be appropriate after considering the severity and the frequency of the violations of the lender."

The specified activities are " ... (A) fails to properly determine and document that a loan is eligible for financing under this Act or regulations promulgated under this Act, including a failure to document that a loan is eligible for financing under section 7(a) because the applicant is unable to obtain credit elsewhere; (B) sells the guaranteed portion of a loan under section 5(f) when the proceeds of the loan have not been fully disbursed in accordance with program requirements; (C) imposes on an applicant for a loan under section 7(a) a fee that the Administration has not specifically authorized; or (D) re-amortizes a loan solely to make the loan appear current."

[142] Under the bill, " ... The term 'credit elsewhere' means—(1) for the purposes of this Act, except for section 7(b), the availability of credit to the individual loan applicant on reasonable terms and conditions from non-Federal, non-State, or non-local government sources, taking into consideration factors associated with conventional lending practices, including but not limited to—(A) the business industry in which the loan applicant operates; (B) whether the loan applicant is an enterprise that has been in operation for a period of less than 2 years; (C) the adequacy of the collateral available to secure the requested loan; and (D) the loan term necessary to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business; and (2) for the purposes of section 7(b), the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner (continued...)

used to support OCRM operations;[143] required the SBA to identify potential loan risks by lenders participating in the Preferred Lenders Program by requiring the SBA, at the end of each year, to "calculate the percentage of loans in a lender's portfolio made without a contribution of borrower equity when the loan's purpose was to establish a new small business concern, to effectuate a change of small business ownership, or to purchase real estate"; and, among other provisions, prohibited the SBA from approving any loan if its financing is more than 100% of project costs.

Legislation was also introduced (S. 2125, the Small Business Lending and Economic Inequality Reduction Act of 2015) to provide permanent, statutory authorization for the Community Advantage Pilot program (see **Appendix**). The SBA announced on December 28, 2015, that it was extending the Community Advantage Pilot program through March 31, 2020. It had been set to expire on March 15, 2017.

Legislative Activity During the 115th Congress

Recognizing that 7(a) loan approvals during the first half of FY2017 were about 9% higher than during the first half in FY2016, Congress included a provision in P.L. 115-31, the Consolidated Appropriations Act, 2017, to increase the 7(a) program's authorization limit to $27.5 billion for FY2017 from $26.5 billion in FY2016.

Concluding Observations

The congressional debate concerning the SBA's 7(a) program during the 111th Congress was not whether the federal government should act, but which federal policies would most likely enhance small businesses' access to capital and result in job retention and creation. As a general proposition, some Members of Congress argued that the SBA should be provided additional resources to assist small businesses in acquiring capital necessary to start, continue, or expand operations with the expectation that in so doing small businesses will create jobs.[144] 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

(...continued)

resides, for similar purposes and periods of time; and (2) by striking section 18(b) (15 U.S.C. 647(b)) and inserting the following: (b) As used in this Act, the term 'agricultural enterprises' means those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries."

[143] Under the bill " ... Beginning on October 1, 2016 or the date that is 30 days after the date of enactment of this clause, whichever is later, the Administration shall assess, collect, and retain a fee in an amount that is not greater than 0.03 percent per year of the outstanding balance of the deferred participation share of each loan approved under this subsection, the proceeds of which shall be used solely to support the operations of the Office of Credit Risk Management.; and ...Section 5(g)(4)(A) of the Small Business Act (15 U.S.C. 634(g)(4)(A)) is amended by striking the first sentence and inserting "The Administrator shall collect a fee for any loan guarantee sold into the secondary market under subsection (f) in an amount equal to 50 percent of the portion of the sale price that exceeds 108 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration." ...EFFECTIVE DATE- The amendment made by paragraph (1) shall take effect on October 1, 2017.

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

regulation, and federal fiscal restraint as the best means to help small businesses further economic growth and job creation.[145]

In terms of specific program changes, increasing the 7(a) program's loan limit, extending the 7(a) program's temporary fee subsidies and 90% maximum loan guaranty percentage, and establishing an alternative size standard for the 7(a) program were all designed to achieve the same goal: to enhance job creation by increasing the ability of 7(a) borrowers to access credit at affordable rates. However, determining how specific changes in federal policy are most likely to enhance job creation is a challenging task. For example, a 2008 Urban Institute study concluded that differences in the term, interest rate, and amount of SBA financing were "not significantly associated with increasing sales or employment among firms receiving SBA financing."[146] The study also reported that the analysis accounted for less than 10% of the variation in firm performance. The Urban Institute suggested that local economic conditions, local zoning regulations, state and local tax rates, state and local business assistance programs, and the business owner's charisma or business acumen also "may play a role in determining how well a business performs after receipt of SBA financing."[147]

As the Urban Institute study suggests, because many factors influence business success, measuring the 7(a) program's effect on job retention and creation is complicated. That task is made even more challenging by the absence of performance-oriented measures that could serve as a guide. Both GAO and the SBA's OIG have recommended that the SBA adopt outcome performance-oriented measures for its loan guaranty programs, such as tracking the number of borrowers who remain in business after receiving a loan to measure the extent to which the program contributed to their ability to stay in business.[148] Other performance-oriented measures that Congress might also consider include requiring the SBA to survey 7(a) borrowers to measure the difficulty they experienced in obtaining a loan from the private sector and the extent to which the 7(a) loan or technical assistance received contributed to their ability to create jobs or expand their scope of operations.

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

[146] Shelli B. Rossman and Brett Theodos, with Rachel Brash, Megan Gallagher, Christopher Hayes, and Kenneth Temkin, *Key Findings from the Evaluation of the Small Business Administration's Loan and Investment Programs: Executive Summary* (Washington, DC: The Urban Institute, January 2008), p. 58, at http://www.urban.org/UploadedPDF/411602_executive_summary.pdf.

[147] Ibid.

[148] GAO, *Small Business Administration: 7(a) Loan Program Needs Additional Performance Measures*, GAO-08-226T, November 1, 2007, p. 2, at http://www.gao.gov/new.items/d08226t.pdf; and SBA, Office of the Inspector General, *SBA's Administration of the Microloan Program under the Recovery Act*, December 28, 2009, pp. 6-7, at https://www.sba.gov/sites/default/files/om10-10.pdf.

Appendix. 7(a) Specialized Programs

The 7(a) program has several specialized programs that offer streamlined and expedited loan procedures for particular groups of borrowers, including the SBAExpress, Export Express, and Community Advantage programs. Lenders must be approved by the SBA for participation in these programs.

SBAExpress Program

The SBAExpress program was established as a pilot program by the SBA on February 27, 1995, and made permanent through legislation, subject to reauthorization, in 2004 (P.L. 108-447, the Consolidated Appropriations Act, 2005).[149] The program is designed to increase the availability of credit to small businesses by permitting lenders to use their existing documentation and procedures in return for receiving a reduced SBA guaranty on loans.[150] It provides a 50% loan guaranty on loan amounts up to $350,000.

As shown in **Table A-1**, the SBA approved 32,568 SBAExpress loans (50.8% of total 7(a) program loan approvals), totaling $2.16 billion (9.0% of total 7(a) program amount approvals) in FY2016. The program's higher loan amount in FY2011 was due, at least in part, to a provision in P.L. 111-240, the Small Business Jobs Act of 2010, which temporarily increased the SBAExpress program's loan limit to $1 million for one year following enactment (through September 27, 2011).

Table A-1. SBAExpress Loan Approvals, FY2011-FY2016

Fiscal Year	# of Loan Approvals	Amount of Loan Approvals ($ in billions)
2011	26,563	$2.84
2012	22,974	$1.75
2013	21,608	$1.65
2014	26,553	$1.91
2015	32,260	$2.20
2016	32,568	$2.16

Source: U.S. Small Business Administration, "SBA Lending Statistics for Major Programs (as of 9/30/2016)," at https://www.sba.gov/sites/default/files/aboutsbaarticle/SBA_Lending_Statistics_for_Major_Programs_as_of_09-30-2016.pdf.

During the 112th Congress, H.R. 2936, the Small Business Administration Express Loan Extension Act of 2011, would have extended the SBAExpress program's higher loan limit for an additional year (through September 27, 2012).

[149] The SBAExpress program was initially called FA$TRAK and offered a 50% loan guaranty on loans of up to $100,000. FA$TRAK's program guidance was issued on March 6, 1995. See SBA, "FA$TRAK," 60 *Federal Register* 12271-12275, March 6, 1995. A brief history of the SBAExpress program is provided in SBA, "SBAExpress Program Guide," (effective October 1, 2002), p. 3, at https://www.sba.gov/sites/default/files/files/sba_elending_clc_sbaexpress.pdf.

[150] SBA, "The SBA Express Pilot Program: Inspection Report," June 1998, p. 3.

SBAExpress loan proceeds can be used for the same purposes as those of the 7(a) program (expansion, renovation, new construction, the purchase of land or buildings, the purchase of equipment, fixtures, and lease-hold improvements, working capital, to refinance debt for compelling reasons, seasonal line of credit, and inventory); except that participant debt restructure cannot exceed 50% of the project and may be used for revolving credit. The program's loan terms are the same as those of the 7(a) program (the loan maturity for working capital, machinery, and equipment (not to exceed the life of the equipment) is typically 5 years to 10 years; and the loan maturity for real estate is up to 25 years, except that the term for a revolving line of credit cannot exceed 7 years.

The SBAExpress loan's interest rates are negotiable with the lender, subject to maximums. Rates can be fixed or variable. Fixed rates may not exceed prime plus 6.5% on loans of $50,000 or less and prime plus 4.5% on loans over $50,000. Variable interest rates are based on either the prime rate (as published in *The Wall Street Journal*), the 30-day LIBOR plus 3.0%, or the SBA's optional peg rate (published quarterly in the *Federal Register*), plus 6.5% on loans of $50,000 or less, and plus 4.5% on loans over $50,000.[151] The program has the same fees as those used in the 7(a) program. To account for the program's lower guaranty rate of 50%, lenders are allowed to perform their own loan analysis and procedures and receive SBA approval with a targeted 36-hour maximum turnaround time.[152] Also, collateral is not required for loans of $25,000 or less. Lenders are allowed to use their own established collateral policy for loans over $25,000.

As mentioned earlier, the Obama Administration waived the up-front loan guaranty fee and ongoing servicing fee for 7(a) loans of $150,000 or less approved in FY2014, FY2015, and FY2016; the up-front loan guaranty fee for 7(a) loans of $150,000 or less approved in FY2017; the up-front, one-time loan guaranty fee for veteran loans under the SBAExpress program (up to $350,000) from January 1, 2014, through the end of FY2015 (called the Veterans Advantage Program); 50% of the up-front loan guaranty fee on all non-SBAExpress 7(a) loans to veterans of $150,001 up to and including $5 million in FY2015 and FY2016; and 50% of the up-front loan guaranty fee on all non-SBAExpress 7(a) loans to veterans of $150,001 up to and including $500,000 in FY2017.

In addition, P.L. 114-38, the Veterans Entrepreneurship Act of 2015, provided statutory authorization and made permanent the veteran's fee waiver in the SBAExpress program, 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 this fee in FY2016 and is waiving it in FY2017.

The SBA indicated that its fee waivers for veterans are part "of SBA's broader efforts to make sure that veterans have the tools they need to start and grow a business."[153]

In a related development, the SBA discontinued the Patriot Express Pilot Program on December 31, 2013. It provided loans of up to $500,000 (with a guaranty of up to 85% of loans of $150,000 or less and up to 75% of loans exceeding $150,000) to veterans and their spouses.[154] It had been

[151] SBA, "SBAExpress," at https://www.sba.gov/content/sba-express.

[152] Ibid.

[153] SBA, "SBA Announces New Measures to Help Get Small Business Loans Into the Hands of Veterans," November 8, 2013, at https://www.sba.gov/content/sba-announces-new-measures-help-get-small-business-loans-hands-veterans.

[154] Eligible businesses were required to be owned and controlled (51% or more) by one or more of the following groups: veteran, active duty military participating in the military's Transition Assistance Program, reservist or national guard member or a spouse of any of these groups, a widowed spouse of a servicemember who died while in service, or a widowed spouse of a veteran who died of a service-connected disability. See SBA, "SOP 50 10 5(E): Lender and (continued...)

in operation since 2007, and, like the SBAExpress program, featured streamlined documentation requirements and expedited loan processing. Over its history, the Patriot Express Pilot Program disbursed 9,414 loans amounting to over $791 million.[155]

Export Express

The Export Express program was initially established as a subprogram of the SBAExpress program in 1998, and made a separate pilot program in 2000.[156] It was made permanent through legislation, subject to reauthorization, in 2010 (P.L. 111-240, the Small Business Jobs Act of 2010).

The Export Express program is designed to increase the availability of credit to current and prospective small business exporters that have been in business, though not necessarily in exporting, for at least 12 full months, particularly those small businesses needing revolving lines of credit.[157] Export Express loans may not be used to finance overseas operations, except for the marketing and/or distribution of products/services exported from the United States.[158]

The program is generally subject to the same loan processing, making, closing, servicing, and liquidation requirements as well as the same maturity terms, interest rates, and applicable fees as the SBAExpress program. Two key differences between the two programs is that the Export Express program's maximum loan amount is up to $500,000, and its guaranty rate is 90% for loans of $350,000 or less, and 75% for loans exceeding $350,000.

There were 80 lenders with approved SBA Export Express loan guaranties at the outset of FY2015. These lenders are located in 31 states, Guam, and Puerto Rico.[159] As shown in **Table A-2**, the SBA approved 433 Export Express loans totaling $22.3 million in FY2016.

(...continued)

Development Company Loan Programs," (effective June 1, 2012), pp. 83, 127, at https://www.sba.gov/sites/default/files/SOP%2050%2010%205%28E%29%20%285-16-2012%29%20clean.pdf.

[155] SBA, Office of Congressional and Legislative Affairs, "Correspondence with the author," February 21, 2014.

[156] SBA, "Announcement of SBA Export Express – a New Pilot Loan Guaranty Program for Exporters," 65 *Federal Register* 60491, October 11, 2000; and SBA, "Export Express Pilot Program," 70 *Federal Register* 56962-56963, September 29, 2005.

[157] The 12-month in business requirement can be waived if "the applicant's key personnel have clearly demonstrated export expertise and substantial previous successful business experience, and the lender processes the Export Express loan using conventional commercial loan underwriting procedures and does not rely solely on credit scoring or credit matrices to approve the loan." See SBA, "SOP 50 10 5(I): Lender and Development Company Loan Programs," (effective January 1, 2017), p. 102, at https://www.sba.gov/sites/default/files/sops/SOP_50_10_5_I_FINAL_Clean_Highlighted_Changes.pdf.

[158] Ibid., p. 115.

[159] SBA, "Export Express Program Lenders," at https://www.sba.gov/content/lenders-participating-sba%27s-export-express-program-0.

Table A-2. Export Express Loan Approvals, FY2011-FY2016

Fiscal Year	# of Loan Approvals	Amount of Loan Approvals ($ in millions)
2011	287	$36.2
2012	409	$35.2
2013	411	$30.9
2014	406	$23.5
2015	434	$28.0
2016	433	$22.3

Source: U.S. Small Business Administration, Office of Legislative and Congressional Affairs, "Correspondence with the author," October 25, 2016.

Community Advantage 7(a) Loan Initiative

The SBA's Community Advantage 7(a) loan initiative became operational on February 15, 2011.[160] It is designed to increase lending to underserved low- and moderate-income communities. The Community Advantage loan initiative offers a streamlined application process for loans of up to $250,000. It, along with the now discontinued Small Loan Advantage program,[161] replaced the Community Express Pilot Program, which was also designed to increase lending to underserved communities. It was created by the SBA in May 1999 and ended on April 30, 2011.[162]

The Community Advantage loan initiative is designed to increase lending in underserved communities by increasing "the number of SBA 7(a) lenders who reach underserved communities, targeting community-based, mission-focused financial institutions which were previously not able to offer SBA loans."[163] These mission-focused financial institutions include

- non-federally regulated Community Development Financial Institutions certified by the U.S. Department of the Treasury,

[160] SBA, "Small Loan Advantage," at https://www.sba.gov/offices/headquarters/oca/resources/14835; and SBA, "SBA Announces New Initiatives Aimed at Increasing Lending in Underserved Communities," December 15, 2010, at https://www.sba.gov/content/sba-announces-new-initiatives-aimed-increasing-lending-underserved-communities.

[161] The SBA's Small Loan Advantage (SLA) program also became operational on February 15, 2011. It provided a streamlined application process for 7(a) loans of up to $350,000 (initially $250,000) if the loan received an acceptable credit score from the SBA prior to the loan being submitted for processing. The program provided the same loan guaranty rate as that of the 7(a) program on loan amounts up to $350,000 (85% for loans up to $150,000 and 75% for those greater than $150,000) and loan proceeds could be used for the same purposes as those of the 7(a) program. The borrower's interest rate was negotiable with the lender, subject to the same maximum rate limitations as those of the 7(a) program. Initially, the SLA program was restricted to PLP lenders. The program was expanded to all SBA lenders on June 1, 2012. The SBA adopted the SLA application process as the model for processing all non-express 7(a) loans of $350,000 or less, effective January 1, 2014.

[162] U.S. Congress, House Committee on Small Business, *Small Business Financing and Investment Act Of 2009*, report to accompany H.R. 3854, 111th Cong., 2nd sess., October 26, 2009, H.Rept. 111-315 (Washington: GPO, 2009), p. 7. The SBA indicated that the Community Express Pilot Program "has had mixed outcomes," providing loans "to new businesses, minority businesses and other underserved sectors" but with "significantly higher default rates (almost 40% of loans defaulted in certain cohorts) compared with other similarly sized 7(a) loans." See SBA, "Community Express Pilot Program," 75 *Federal Register* 80562, December 22, 2010.

[163] SBA, "Advantage Loan Initiatives," at http://www.sba.gov/advantage.

- SBA's Certified Development Companies,
- SBA's nonprofit microlending intermediaries, and, added in December 2015,
- SBA's Intermediary Lending Pilot Program intermediaries.[164]

They are expected to maintain at least 60% of their SBA loan portfolio in underserved markets, including loans to small businesses in, or that have more than 50% of their full time workforce residing in, low-to-moderate income (LMI) communities; Empowerment Zones and Enterprise Communities; HUBZones; start-ups (firms in business less than 2 years); businesses eligible for the SBA's Veterans Advantage program; and, added in December 2015, Promise Zones.[165]

As of September 30, 2015, there were 100 approved Community Advantage lenders, and 74 of them had issued at least one Community Advantage loan. As shown in **Table A-3**, the SBA approved 987 Community Advantage loans amounting to $123.03 million in FY2016, and 2,744 Community Advantage loans amounting to $348.6 million from the time the program became operational to the end of FY2016.

Table A-3. Community Advantage Loan Approvals, FY2011-FY2016

Fiscal Year	# of Loan Approvals	Amount of Loan Approvals ($ in millions)
2011	15	$2.14
2012	188	$25.24
2013	273	$38.20
2014	453	$56.47
2015	828	$103.52
2016	987	$123.03
Total	2,744	$348.60

Source: U.S. Small Business Administration, "SBA Sets New Small Business Lending Records," October 31, 2016, at https://www.sba.gov/about-sba/sba-newsroom/press-releases-media-advisories/sba-sets-new-small-business-lending-records.

The initiative was originally announced as a three-year pilot program (through March 15, 2014) and was subsequently extended through March 15, 2017, and then through March 31, 2020.[166] It provides the same loan guaranty as that of the 7(a) program on loan amounts up to $250,000 (85% for loans up to $150,000 and 75% for those greater than $150,000). The loan proceeds can be used for the same purposes as those of the 7(a) program: expansion, renovation, new

[164] Ibid; and SBA, "Community Advantage Pilot Program," 80 *Federal Register* 80873, December 28, 2015.

[165] The Obama Administration's Promise Zone initiative "seeks to partner with local communities and businesses to create jobs, increase economic security, expand educational opportunities, increase access to quality, affordable housing and improve public safety." The first five Zones are located in San Antonio, Philadelphia, Los Angeles, Southeastern Kentucky, and the Choctaw Nation of Oklahoma. See The White House, Office of the Press Secretary, "Fact Sheet: President Obama's Promise Zones Initiative," at https://www.whitehouse.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative. Also see SBA, "Advantage Loan Initiatives," at http://www.sba.gov/advantage; SBA, "Community Advantage Participant Guide," December 28, 2015, p. 4, at https://www.sba.gov/sites/default/files/files/CA-Participant-Guide-4-December-28-2015.pdf; and SBA, "Community Advantage Pilot Program," 80 *Federal Register* 80874, December 28, 2015.

[166] SBA, "Community Advantage Pilot Program," 77 *Federal Register* 67433, November 9, 2012; SBA, "Community Advantage Pilot Program," 80 *Federal Register* 80873, December 28, 2015.

construction, purchase of land or buildings, purchase of equipment, fixtures, and lease-hold improvements, working capital, refinance debt for compelling reasons, seasonal line of credit, and inventory. The loan terms and guaranty fees are also the same as those of the 7(a) program.[167] The loan's maximum interest rate is prime, plus 6%.[168] The program has an expedited approval process, which includes a two-page application for borrowers and a goal of completing the loan approval process within 5 days to 10 days.[169]

The SBA has indicated that the Community Advantage initiative's goal is to "leverage the experience these institutions already have in lending to minority, women-owned and start-up companies in economically challenged markets, along with their management and technical assistance expertise, to help make their borrowers successful."[170]

As mentioned previously, legislation was introduced during the 114th Congress (S. 2125, the Small Business Lending and Economic Inequality Reduction Act of 2015) to provide the Community Advantage Pilot program permanent, statutory authorization.

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[167] SBA, "Advantage Loan Initiatives," at https://www.sba.gov/advantage.

[168] SBA, "Community Advantage Participant Guide," p. 18, at https://www.sba.gov/sites/default/files/files/Community%20Advantage%20Participant%20Guide%203_0%20%28Final%20Version%2011-13-2012%29.pdf; and SBA, "Community Advantage Pilot Program," 77 *Federal Register* 6619, February 8, 2012.

[169] SBA, "Community Advantage," at https://www.sba.gov/offices/headquarters/oca/resources/14836.

[170] SBA, "SBA Announces New Initiatives Aimed at Increasing Lending in Underserved Communities," December 15, 2010, at https://www.sba.gov/content/sba-announces-new-initiatives-aimed-increasing-lending-underserved-communities. The SBA maintains a list of approved Community Advantage pilot program lenders on its website at https://www.sba.gov/content/community-advantage-approved-lenders.