

## Calendar No. 167

113TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
113-89

---

---

### THE COMMERCIAL REAL ESTATE AND ECONOMIC DEVELOPMENT ACT OF 2013

---

SEPTEMBER 10, 2013.—Ordered to be printed

---

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

### R E P O R T

[To accompany S. 289]

The Committee on Small Business and Entrepreneurship, having considered the bill (S. 289) to extend the low-interest refinancing provisions under the Local Development Business Loan Program of the Small Business Administration, reports favorably thereon, with an amendment, and recommends that the bill, as amended, do pass.

#### I. INTRODUCTION

The CREED Act (S. 289) was introduced by the Committee's Chair, Senator Mary L. Landrieu, for herself and Committee member Senator Jeanne Shaheen, on February 12, 2013. The bill's other co-sponsors include Committee members Senator Benjamin L. Cardin, Senator William M. Cowan, and Senator Kay Hagan, as well as Senators Johnny Isakson, Tim Johnson, Angus S. King, Jr., and Claire McCaskill.

The bipartisan bill extends a provision allowing small business owners to refinance existing commercial debt using the Small Business Administration's (SBA) 504 loan program for any fiscal year during which the 504 base program is operating at zero subsidy. By doing so, the program lowers small businesses' monthly mortgage payments at no cost to taxpayers, thus putting more capital in the hands of America's job creators.

During markup of the bill, the Risch-Landrieu amendment to the bill, which permits the refinancing authority only during fiscal years in which the 504 base program is operating at zero subsidy,

was approved unanimously by voice vote. The bill, as amended, was also approved unanimously by voice vote.

## **II. HISTORY (PURPOSE & NEED FOR LEGISLATION)**

One of the biggest challenges that small businesses continued to face in the wake of the recession that began in late 2007 was access to sufficient capital. As real estate values declined, many small businesses, even those that were performing well and were current on their mortgage payments, were unable to refinance their loans through traditional methods. Even small businesses with equity in their properties were often unable to access it for additional working capital. The purpose of the CREED Act is to extend the Small Business Administration's 504 loan refinance program to allow small businesses to refinance their existing qualified commercial debt through the agency's SBA's local development business loan guaranty program. At a time when our economy is still facing high unemployment, the Committee believes that extending the availability of low-interest refinancing will lower small businesses' monthly mortgage payments, putting more working capital in the hands of America's job creators.

The Small Business Administration administers several loan guaranty programs aimed at increasing small business access to capital. The 504 Certified Development Company (CDC) loan program is a long-term financing tool for economic development that provides small businesses with long-term, fixed-rate loans to help them acquire fixed assets and real estate for expansion or modernization. A 504 loan project consists of three elements: a loan from a private sector lender covering fifty percent of the principal; a second mortgage from an SBA Certified Development Company backed by a 100 percent government guaranteed debenture, covering forty percent of the principal; and an equity contribution from the small business owner to cover the remaining ten percent.

The ability to refinance owner-occupied commercial real estate debt through the 504 loan guaranty program was temporarily expanded by the Small Business Jobs Act of 2010 (P.L. 111-240), which was signed into law by President Barack Obama on September 27, 2010. Section 1122 of the law allowed small businesses to use 504 loans to refinance eligible fixed assets not involving expansions for two years after enactment, with program authorization capped at \$7.5 billion in refinancings each year. The refinance authority, paid for entirely by program fees, was a zero-cost way to help small businesses access their own equity that they had built up over the years in order to hire additional employees or retain those currently employed.

It took some time for the SBA to create a regulation implementing the 504 refinance authority, and the initial regulation, finalized on February 17, 2011, was not fully consistent with legislative intent. The SBA revised its regulations on October 12, 2011. The revised rule was more in line with legislative intent and allowed more businesses with a commercial mortgage to refinance. Participation in the program took off shortly thereafter, and as a result, the 504 refinance program supported \$5.5 billion in total lending to small businesses. However, on September 27, 2012 just as the program was accelerating and the lending community began to utilize it to its full capacity, the program expired.

Small Business Committee Chair Landrieu filed and sponsored several pieces of legislation during the 112th Congress to extend the 504 loan refinance program. Chair Landrieu, Ranking Member Snowe, and Senator Shaheen along with five other bipartisan co-sponsors—Senators Isakson, Thune, Klobuchar, Tim Johnson, and Pryor—originally introduced the provision on April 25, 2012 as S. 2364, a bill to extend the availability of low-interest refinancings under the local development business loan program of the Small Business Administration. The bill, which would have extended the 504 refinance program for an additional year past its scheduled expiration, was referred to the Committee but not acted upon further during the 112th Congress.

Senate Amendment 1833 (S. Amdt. 1833), an amendment in the nature of a substitute to the Jumpstart Our Business Startups (JOBS) Act of 2012 (H.R. 3606), contained a provision to extend the 504 loan refinance program for an additional year past September 27, 2012. S. Amdt. 1833, the Invigorate New Ventures and Entrepreneurs to Succeed Today (INVEST) in America Act of 2012, was introduced on March 15, 2012 by Senator Jack Reed along with Chair Landrieu and Senators Levin, Scott Brown, Merkley, Akaka, Whitehouse, Franken, Harkin, and Durbin. S. Amdt. 1833 was ultimately not included in the final version of H.R. 3606.

Additionally, Senator Landrieu included a 504 refinance provision in Senate Amendment 2521 (S. Amdt. 2521), which she filed to S. 2237, the Small Business Jobs and Tax Relief Act of 2012 on July 11, 2012. Division B of S. Amdt. 2521, entitled the Success Ultimately Comes from Capital, Contracting, Education, Strategic Partnerships, and Smart Regulations (SUCCESS) Act of 2012, contained language to extend the 504 refinance program for an additional year and a half past its scheduled expiration. Although it came up short of the 60 votes needed to end debate, the amendment received a strong 57 bipartisan votes, including five Republicans, when it received a vote on the Senate floor on July 12, 2012. Shortly thereafter, Chair Landrieu filed the SUCCESS Act as a standalone bill. On July 25, 2012, Chair Landrieu introduced S. 3442, the SUCCESS Act of 2012, with eight co-sponsors including Committee members Senator Cardin and Senator Shaheen, as well as Senators Blumenthal, Boxer, Gillibrand, Lieberman, Merkley, and Whitehouse.

Chair Landrieu also offered 504 refinance language as an amendment to S. 3457, the Veterans Jobs Corps Act of 2012. Senate Amendment 2837, offered by Chair Landrieu, Ranking Member Snowe, and Senator Shaheen on September 13, 2012, would have extended the 504 refinance program for an additional year and a half past its scheduled expiration. Ultimately, however, none of the bills or amendments made it to the President's desk during the 112th Congress.

### III. HEARINGS & ROUNDTABLES

In preparing to draft and introduce the CREED Act, the Committee held a number of hearings and roundtables analyzing the SBA's 504 refinance program and heard from small businesses, lenders, and government officials on the effectiveness of the program and the need for extension.

In the 112th Congress:

On November 29, 2012, the Committee held a hearing entitled, “Creating Jobs and Growing the Economy: Legislative Proposals to Strengthen the Entrepreneurial Ecosystem.” The purpose of the hearing was to discuss the legislative proposals included in the “Success Ultimately Comes from Capital, Contracting, Education, Strategic Partnerships, and Smart Regulation (SUCCESS) Act of 2012” (S. 3442), which was the result of recommendations gathered during a series of three Committee roundtables examining the entrepreneurial ecosystem during the 112th Congress. Among the provisions in the SUCCESS Act that the Committee examined during the hearing was the extension of the 504 loan refinancing program. The Committee heard testimony from a variety of small businesses, stakeholders, and Administration officials including the SBA’s Associate Administrator for Investment & Special Advisor of Innovation and the Executive Vice President of a regional Certified Development Company (CDC). Witnesses testified on the effectiveness of the 504 loan refinancing program and the need for its extension, given the continued tight market for conventional real estate mortgages.

In the 113th Congress:

On March 14, 2013, the Committee held a roundtable entitled “Helping Small Businesses Weather Economic Challenges & Natural Disasters: Review of Legislative Proposals on Access to Capital and Disaster Recovery.” The purpose of the roundtable was to discuss four legislative proposals on small business access to capital and disaster recover on which the Committee would focus during the beginning of the 113th Congress, including the CREED Act. Participants included a wide range of small business owners, investors, and stakeholders, and SBA representatives, including the Associate Administrator for the SBA’s Office of Capital Access, which oversees the 504 loan program. The roundtable followed up on previous Committee roundtables and legislative hearings held during the 112th Congress and provided an opportunity for Committee members to highlight their relevant priorities ahead of an upcoming markup on access to capital and disaster recovery legislation.

On April 17, 2013, the Committee held a hearing entitled “The FY2014 Budget Request for the Small Business Administration.” The purpose of the hearing was to review the President’s Fiscal Year 2014 Budget Request for the SBA. Testifying on behalf of the Administration were SBA Administrator Karen Mills, SBA Inspector General Peggy Gustafson, and Dr. Winslow Sargeant, Chief Counsel of the SBA’s Office of Advocacy. In its budget request, the SBA requested the ability to extend the 504 loan refinance program, to which there is zero subsidy cost attached.

#### **IV. DESCRIPTION OF BILL**

S. 289, the Commercial Real Estate and Economic Development Act of 2013, extends the availability of a low-interest commercial real estate refinance program through the Small Business Administration’s 504/CDC loan program. The bill restores the program enacted by Section 1122 of the Small Business Jobs Act of 2010, which expired on September 27, 2012. As amended by the Risch-Landrieu amendment, the bill allows small businesses to refinance eligible existing commercial debt only during fiscal years in which the SBA’s base 504 program operates at zero subsidy.

## V. COMMITTEE VOTE

In compliance with rule XXVI (7)(b) of the Standing Rules of the Senate, the following vote was recorded on June 17, 2013.

A motion to adopt the Commercial Real Estate and Economic Development Act of 2013, to extend the availability of low-interest refinancing provisions under the Local Development Business Loan Program of the Small Business Administration, as amended was approved unanimously by voice vote with the following Senators present: Landrieu, Risch, Levin, Cantwell, Pryor, Cardin, Shaheen, Hagan, Heitkamp, Cowan, Rubio, Scott, Fischer, and Johnson (WI).

## VI. COST ESTIMATE

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

AUGUST 1, 2013.

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

DEAR MADAM CHAIR: The Congressional Budget Office has prepared the enclosed cost estimate for S. 289, the Commercial Real Estate and Economic Development Act of 2013.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Maggie Morrissey and Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

### *S. 289—Commercial Real Estate and Economic Development Act of 2013*

As ordered reported by the Senate Committee on Small Business and Entrepreneurship on June 17, 2013

In 2010, the Small Business Jobs Act (Public Law 111–240) authorized a new purpose for the Certified Development Company (CDC) Loan Program at the Small Business Administration (SBA), temporarily allowing the agency to guarantee loans issued to refinance existing debt without requiring an expansion of the business by the borrower. (The CDC loan program is designed to provide small businesses with long-term loans at fixed rates to purchase major assets, such as commercial real estate.) This new authority ended in 2012. S. 289 would reauthorize the refinance program during any fiscal year that the CDC loan program operates at no cost to the federal government. If that condition is not met, then the refinance option would not be authorized that year.

In 2012, SBA received an appropriation of \$48 million for the subsidy cost of the CDC program. Based on information from SBA, CBO expects that the CDC program will continue to have a cost over the next five years. Therefore, CBO estimates that implementing S. 289 would not affect discretionary spending because the conditions would not be met for the refinance program to restart

operations. Enacting S. 289 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 289 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Maggie Morrissey and Susan Willie. The estimate was approved by Theresa Gullo, Deputy Assistant Director of Budget Analysis.

## **VII. EVALUATION OF REGULATORY IMPACT**

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

## **VIII. SECTION-BY-SECTION ANALYSIS**

### *Section 1. Title*

This section provides the title of the bill. This Act may be cited as the “Commercial Real Estate and Economic Development Act of 2013” or the “CREED Act of 2013.”

### *Section 2. Low-interest refinancing under the Local Development Business Loan Program*

This section restores the low-interest commercial real estate refinance program through the SBA’s 504/CDC loan program during any fiscal year in which the base 504 program operates at zero subsidy. The program was originally established by the Small Business Jobs Act of 2010 and expired on September 27, 2012.