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SMALL BUSINESS ACCESS TO CAPITAL AND EFFICIENCY (ACE) ACT

DECEMBER 19, 2018.—Ordered to be printed

Mr. RISCH, from the Committee on Small Business and
Entrepreneurship, submitted the following

R E P O R T

[To accompany S. 3553]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 3553) to amend the Small Business Investment Act to align the real estate appraisal thresholds under the section 504 program of the Small Business Administration with the threshold used by the Federal banking regulators, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. INTRODUCTION

The Small Business Access to Capital and Efficiency (ACE) Act was introduced by Chairman James E. Risch on October 5, 2018.

The bill amends the Small Business Investment Act of 1958 to align the appraisal threshold amount for SBA's 504 loan guaranty program to the Federal banking regulators' threshold amount for commercial real estate transactions, or the lesser amount of the three Federal banking regulators' (Federal Reserve System, Federal Deposit Insurance Corporation and Comptroller of the Currency) threshold for commercial real estate transactions, if there is a discrepancy. The bill was approved unanimously by a roll call vote as part of a six-bill manager's package.

II. HISTORY (PURPOSE & NEED FOR LEGISLATION)

The Small Business Administration (SBA) administers a number of loan programs to provide access to capital to fit the needs of en-

trepreneurs and small businesses who are unable to obtain conventional credit. One of these programs, the 504/Certified Development Company (CDC) Loan Program, provides long-term, fixed rate financing that is used to acquire fixed assets for expansion or modernization. These loans are made available through Certified Development Companies (CDCs), which serve as SBA's community based partners for providing 504 loans. 504 loans are structured with a third-party lender providing 50 percent of the financing (taking the first lien position), the CDC providing up to 40 percent of the financing through a SBA guaranteed debenture (taking the second lien position), and the applicant providing at least 10 percent of the financing.¹

The 504/CDC loan guaranty program is unique amongst SBA's loan products in part due to its requirements with regard to economic development. A business must create or retain one job for every \$65,000 guaranteed by the SBA, while small manufacturers must create or retain a ratio of one job for every \$100,000 guaranteed. As an alternative to the job creation requirement, a business may qualify if it meets a community development or public policy goal and the CDC lender maintains its portfolio job average requirement. Community development goals include: improving, diversifying or stabilizing the local economy; stimulating other business development; bringing new income into the community; assisting manufacturing firms; or assisting businesses in Labor Surplus Areas. Conversely, public policy goals that qualify include: revitalizing a business district of a community with a written revitalization or redevelopment plan; expanding exports; expanding small businesses owned and controlled by women; expanding small businesses owned and controlled by veterans; expanding minority business development; aiding rural development; and increasing productivity and competitiveness.

The 504/CDC loan guaranty program provides an important option for borrowers seeking financing for major fixed assets such as land, buildings, equipment, and machinery, while providing an economic benefit to the community. In FY 2018, the SBA approved 5,874 504 loans amounting to nearly \$4.8 billion.²

Because of the long-term, fixed-rate terms associated with the 504/CDC loan guaranty program and its focus on fixed assets, the program is often used to secure real estate for small businesses. Since 2000, the SBA loan programs have required appraisals for commercial real estate transactions consistent with the appraisal threshold level set by the Federal banking regulators for conventional commercial real estate loans in 1994.³ While the threshold level for conventional commercial real estate loans is set by regulation, the threshold level for 504 commercial real estate loans is set by statute under the Small Business Investment Act of 1958.

On April 9, 2018, after a year of dialogue with industry stakeholders, the Board of Governors of the Federal Reserve (Federal Reserve), the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) together issued a final rule increasing the appraisal threshold for commercial real

¹Dilger, Robert Jay. Updated November 7, 2018. Small Business Administration 504/CDC Loan Guaranty Program. Retrieved from: <http://www.crs.gov/Reports/R41184>.

²Id.

³OCC: 12 CFR 34.42(d); Federal Reserve: 12 CFR 225.62(d); and FDIC: 12 CFR 323.2(d).

estate loans from \$250,000 to \$500,000.⁴ Part of the impetus for this change stems from the increase in commercial property values since the threshold was established in 1994; due to these increased values, financial institutions were required to get formal appraisals on a larger proportion of transactions than when the standard was originally set. Additionally, through the rulemaking process, regulators determined that the increase in the number of appraisals required may contribute to a higher burden and cost to financial institutions. Regulators concluded that increasing this threshold would reduce the burden for both rural and non-rural institutions while posing no threat to the safety and soundness of financial institutions.

Because the threshold for SBA's 504/CDC loan guaranty program is set at \$250,000 in statute, legislation is required to harmonize and modernize SBA's loan program requirements with the threshold set by Federal banking regulators.

III. DESCRIPTION OF BILL

The bill amends the Small Business Investment Act of 1958 to align the appraisal threshold amount for SBA's 504 loan guaranty program to the Federal banking regulators' threshold amount for commercial real estate transactions, *or* the lesser amount of the three Federal banking regulators' (Federal Reserve System, Federal Deposit Insurance Corporation and Comptroller of the Currency) threshold for commercial real estate transactions, if there is a discrepancy. This change ensures that the 504 loan guaranty program's appraisal threshold is always in harmony with the Federal banking threshold for conventional loans.

IV. COMMITTEE VOTE

In compliance with rule XXVI (7)(b) of the Standing Rules of the Senate, the following vote was recorded on October 11, 2018.

A motion to adopt the Small Business Access to Capital and Efficiency (ACE) Act, a bill to amend the Small Business Investment Act of 1958 to align the real estate appraisal thresholds under the section 504 loan guaranty program of the Small Business Administration to bring those thresholds into line with the thresholds used by the Federal banking regulators, and for other purposes, was approved unanimously, by a roll call vote of 19–0, as part of a six-bill manager's package.⁵ Senators Risch, Cardin, Rubio, Paul, Scott, Ernst, Inhofe, Young, Enzi, Rounds, Kennedy, Cantwell, Shaheen, Heitkamp, Markey, Booker, Coons, Hirono, and Duckworth voted for the bill.

V. 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

⁴ 83 FR 15019.

⁵ The manager's package included: the substitute amendment for S. 2679, the Veterans Small Business Enhancement Act; S. 3552, the 7(a) Real Estate Appraisal Harmonization Act; S. 3553, the Small Business Access to Capital and Efficiency Act; S. 3554, a bill to extend effective date for the sunset for collateral requirements for Small Business Administration disaster loans; S. 3561, the National Guard and Reserve Entrepreneurship Support Act; and S. 3562, the Small Business Runway Extension Act of 2018.

be equal to the amounts discussed in the following letter from the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 15, 2018.

Hon. JAMES E. RISCH,
*Chairman, Committee on Small Business and Entrepreneurship,
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 3553, the Small Business ACE Act.

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

Sincerely,

KEITH HALL,
Director.

Enclosure.

Under current law, small businesses that receive loans under the Small Business Administration's (SBA's) 504/Certified Development Company Loan program are required to receive an appraisal on commercial real property used as collateral in securing those loans if the estimated value of the property is \$250,000 or greater. S. 3553 would raise that threshold to the lowest of the thresholds used by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation to determine when a commercial real estate transaction requires an appraisal. The threshold for all three agencies is currently \$500,000.

Using information from the SBA on the costs of similar activities, CBO estimates that implementing the bill would cost less than \$500,000 for the agency to update its program rules; such spending would be subject to the availability of appropriated funds. CBO also estimates that any change in the subsidy cost of SBA loans, which is subject to appropriation, would also be insignificant.

Enacting S. 3553 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting S. 3553 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029. S. 3553 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

On August 13, 2018, CBO transmitted a cost estimate for H.R. 6348, the Small Business ACE Act, as ordered reported by the House Committee on Small Business on July 18, 2018. The two pieces of legislation are similar and CBO's estimates of their budgetary effects is the same.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

VI. 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 addi-

tional regulatory impact will be incurred in carrying out the provisions of this legislation.

VII. SECTION-BY-SECTION ANALYSIS

Section 1: Short title

This section provides the short title for the Act, the “Small Business Access to Capital and Efficiency Act” or the “Small Business ACE Act.”

Section 2: Appraisal thresholds

This section amends section 502(3)(E)(ii) of the Small Business Investment Act of 1958 (15 U.S.C. 696(3)(E)(ii)) by updating the SBA’s 504/CDC loan guaranty program’s commercial real estate threshold to parallel the threshold set by Federal banking regulators for conventional commercial real estate loans.

This section does not specify a dollar amount for 504 commercial real estate loans, but rather modernizes the statute to match the 504 appraisal threshold to the lowest level set by the Federal banking regulators, should they differ. Currently, the regulators have together set this level at \$500,000 as of April 9, 2018. This language is important to ensure lenders who provide SBA products along with their conventional products—most of whom are federally regulated—do not have an added layer of complexity managing two different appraisal thresholds, while guaranteeing small business borrowers who cannot obtain credit elsewhere are not required to get an appraisal on loans that conventional borrowers do not have to obtain. This language also provides long-term clarity and certainty to lenders and borrowers by unifying the 504 program’s appraisal threshold with the Federal banking regulators threshold moving forward.