

Calendar No. 634

111TH CONGRESS
2^D SESSION

S. 2869

[Report No. 111–342]

To increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2009

Ms. LANDRIEU (for herself, Ms. SNOWE, Mr. KERRY, Mr. LIEBERMAN, Mrs. SHAHEEN, Mr. DORGAN, Mr. CASEY, Mr. PRYOR, Mr. BINGAMAN, Mr. BURRIS, Ms. KLOBUCHAR, Mr. LEVIN, Mrs. BOXER, Ms. STABENOW, Mr. BAYH, Mr. ISAKSON, Mrs. FEINSTEIN, Mr. CARDIN, Mr. JOHNSON, Mrs. LINCOLN, Mrs. MURRAY, Mr. JOHANNES, Mr. BENNET, Mrs. MCCASKILL, Mr. MERKLEY, Mr. SPECTER, Mr. UDALL of New Mexico, and Ms. CANTWELL) introduced the following bill; which was read twice and referred to the Committee on Small Business and Entrepreneurship

SEPTEMBER 29, 2010

Reported by Ms. LANDRIEU, with an amendment

[Insert the part printed in *italic*]

A BILL

To increase loan limits for small business concerns, to provide for low interest refinancing for small business concerns, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Small Business Job
3 Creation and Access to Capital Act of 2009”.

4 **TITLE I—NEXT STEPS FOR MAIN**
5 **STREET CREDIT AVAILABILITY**

6 **SEC. 101. SECTION 7(a) BUSINESS LOANS.**

7 (a) AMENDMENT.—Section 7(a) of the Small Busi-
8 ness Act (15 U.S.C. 636(a)) is amended—

9 (1) in paragraph (2)(A)—

10 (A) in clause (i), by striking “75 percent”
11 and inserting “90 percent”; and

12 (B) in clause (ii), by striking “85 percent”
13 and inserting “90 percent”; and

14 (2) in paragraph (3)(A), by striking
15 “\$1,500,000 (or if the gross loan amount would ex-
16 ceed \$2,000,000” and inserting “\$4,500,000 (or if
17 the gross loan amount would exceed \$5,000,000”.

18 (b) PROSPECTIVE REPEAL.—Effective January 1,
19 2011, section 7(a) of the Small Business Act (15 U.S.C.
20 636(a)) is amended—

21 (1) in paragraph (2)(A)—

22 (A) in clause (i), by striking “90 percent”
23 and inserting “75 percent”; and

24 (B) in clause (ii), by striking “90 percent”
25 and inserting “85 percent”; and

1 (2) in paragraph (3)(A), by striking
2 “\$4,500,000” and inserting “\$3,750,000”.

3 **SEC. 102. MAXIMUM LOAN AMOUNTS UNDER 504 PROGRAM.**

4 Section 502(2)(A) of the Small Business Investment
5 Act of 1958 (15 U.S.C. 696(2)(A)) is amended—

6 (1) in clause (i), by striking “\$1,500,000” and
7 inserting “\$5,000,000”;

8 (2) in clause (ii), by striking “\$2,000,000” and
9 inserting “\$5,000,000”;

10 (3) in clause (iii), by striking “\$4,000,000” and
11 inserting “\$5,500,000”;

12 (4) in clause (iv), by striking “\$4,000,000” and
13 inserting “\$5,500,000”; and

14 (5) in clause (v), by striking “\$4,000,000” and
15 inserting “\$5,500,000”.

16 **SEC. 103. MAXIMUM LOAN LIMITS UNDER MICROLOAN PRO-**
17 **GRAM.**

18 Section 7(m) of the Small Business Act (15 U.S.C.
19 636(m)) is amended—

20 (1) in paragraph (1)(B)(iii), by striking
21 “\$35,000” and inserting “\$50,000”;

22 (2) in paragraph (3)—

23 (A) in subparagraph (C), by striking
24 “\$3,500,000” and inserting “\$5,000,000”; and

1 (B) in subparagraph (E), by striking
 2 “\$35,000” each place that term appears and
 3 inserting “\$50,000”; and
 4 (3) in paragraph (11)(B), by striking
 5 “\$35,000” and inserting “\$50,000”.

6 **SEC. 104. TEMPORARY FEE REDUCTIONS.**

7 Section 501 of the American Recovery and Reinvest-
 8 ment Act of 2009 (Public Law 111–5; 123 Stat. 151) is
 9 amended by striking “September 30, 2010” each place
 10 that term appears and inserting “December 31, 2010”.

11 **SEC. 105. NEW MARKETS VENTURE CAPITAL COMPANY IN-**
 12 **VESTMENT LIMITATIONS.**

13 Section 355 of the Small Business Investment Act
 14 of 1958 (15 U.S.C. 689d) is amended by adding at the
 15 end the following:

16 “(e) INVESTMENT LIMITATIONS.—

17 “(1) DEFINITION.—In this subsection, the term
 18 ‘covered New Markets Venture Capital company’
 19 means a New Markets Venture Capital company—

20 “(A) granted final approval by the Admin-
 21 istrator under section 354(e) on or after March
 22 1, 2002; and

23 “(B) that has obtained a financing from
 24 the Administrator.

1 “(2) LIMITATION.—Except to the extent ap-
 2 proved by the Administrator, a covered New Markets
 3 Venture Capital company may not acquire or issue
 4 commitments for securities under this title for any
 5 single enterprise in an aggregate amount equal to
 6 more than 10 percent of the sum of—

7 “(A) the regulatory capital of the covered
 8 New Markets Venture Capital company; and

9 “(B) the total amount of leverage pro-
 10 jected in the participation agreement of the cov-
 11 ered New Markets Venture Capital.”.

12 **SEC. 106. ALTERNATIVE SIZE STANDARDS.**

13 Section 3(a) of the Small Business Act (15 U.S.C.
 14 632(a)) is amended by adding at the end the following:

15 “(5) ALTERNATIVE SIZE STANDARD.—

16 “(A) IN GENERAL.—The Administrator shall
 17 establish an alternative size standard for applicants
 18 for business loans under section 7(a) and applicants
 19 for development company loans under title V of the
 20 Small Business Investment Act of 1958 (15 U.S.C.
 21 695 et seq.), that uses maximum tangible net worth
 22 and average net income as an alternative to the use
 23 of industry standards.

24 “(B) INTERIM RULE.—Until the date on which
 25 the alternative size standard established under sub-

1 paragraph (A) is in effect, an applicant for a busi-
 2 ness loan under section 7(a) or an applicant for a
 3 development company loan under title V of the
 4 Small Business Investment Act of 1958 may be eli-
 5 gible for such a loan if—

6 “(i) the maximum tangible net worth of
 7 the applicant is not more than \$15,000,000;
 8 and

9 “(ii) the average net income after Federal
 10 income taxes (excluding any carry-over losses)
 11 of the applicant for the 2 full fiscal years before
 12 the date of the application is not more than
 13 \$5,000,000.”.

14 **SEC. 107. SALE OF 7(a) LOANS IN SECONDARY MARKET.**

15 Section 5(g) of the Small Business Act (15 U.S.C.
 16 634(g)) is amended by adding at the end the following:

17 “(6) If the amount of the guaranteed portion of any
 18 loan under section 7(a) is more than \$500,000, the Ad-
 19 ministrator shall, upon request of a pool assembler, divide
 20 the loan guarantee into increments of \$500,000 and 1 in-
 21 crement of any remaining amount less than \$500,000, in
 22 order to permit the maximum amount of any loan in a
 23 pool to be not more than \$500,000. Only 1 increment of
 24 any loan guarantee divided under this paragraph may be
 25 included in the same pool. Increments of loan guarantees

1 to different borrowers that are divided under this para-
 2 graph may be included in the same pool.”.

3 **SEC. 108. ONLINE LENDING PLATFORM.**

4 It is the sense of Congress that the Administrator
 5 of the Small Business Administration should establish a
 6 website that—

7 (1) lists each lender that makes loans guaran-
 8 teed by the Small Business Administration and pro-
 9 vides information about the loan rates of each such
 10 lender; and

11 (2) allows prospective borrowers to compare
 12 rates on loans guaranteed by the Small Business
 13 Administration.

14 **TITLE II—SMALL BUSINESS**
 15 **ACCESS TO CAPITAL**

16 **SEC. 202. LOW-INTEREST REFINANCING UNDER THE LOCAL**
 17 **DEVELOPMENT BUSINESS LOAN PROGRAM.**

18 (a) REFINANCING.—Section 502(7) of the Small
 19 Business Investment Act of 1958 (15 U.S.C. 696(7)) is
 20 amended by adding at the end the following:

21 “(C) REFINANCING NOT INVOLVING EX-
 22 PANSIONS.—

23 “(i) DEFINITIONS.—In this subpara-
 24 graph—

1 “(I) the term ‘borrower’ means a
2 small business concern that submits
3 an application to a development com-
4 pany for financing under this sub-
5 paragraph;

6 “(II) the term ‘eligible fixed
7 asset’ means tangible property relat-
8 ing to which the Administrator may
9 provide financing under this section;
10 and

11 “(III) the term ‘qualified debt’
12 means indebtedness—

13 “(aa) that—

14 “(AA) was incurred not
15 less than 2 years before the
16 date of the application for
17 assistance under this sub-
18 paragraph;

19 “(BB) is a commercial
20 loan;

21 “(CC) is not subject to
22 a guarantee by a Federal
23 agency;

1 “(DD) the proceeds of
2 which were used to acquire
3 an eligible fixed asset;

4 “(EE) was incurred for
5 the benefit of the small busi-
6 ness concern; and

7 “(FF) is collateralized
8 by eligible fixed assets; and

9 “(bb) for which the borrower
10 has been current on all payments
11 for not less than 1 year before
12 the date of the application.

13 “(ii) AUTHORITY.—A project that
14 does not involve the expansion of a small
15 business concern may include the refi-
16 nancing of qualified debt if—

17 “(I) the amount of the financing
18 is not more than 80 percent of the
19 value of the collateral for the financ-
20 ing, except that, if the appraised value
21 of the eligible fixed assets serving as
22 collateral for the financing is less than
23 the amount equal to 125 percent of
24 the amount of the financing, the bor-
25 rower may provide additional cash or

1 other collateral to eliminate any defi-
2 ciency;

3 “(II) the borrower has been in
4 operation for all of the 2-year period
5 ending on the date of the loan; and

6 “(III) for a financing for which
7 the Administrator determines there
8 will be an additional cost attributable
9 to the refinancing of the qualified
10 debt, the borrower agrees to pay a fee
11 in an amount equal to the anticipated
12 additional cost.

13 “(iii) FINANCING FOR BUSINESS EX-
14 PENSES.—

15 “(I) FINANCING FOR BUSINESS
16 EXPENSES.—The Administrator may
17 provide financing to a borrower that
18 receives financing that includes a refi-
19 nancing of qualified debt under clause
20 (ii), in addition to the refinancing
21 under clause (ii), to be used solely for
22 the payment of business expenses.

23 “(II) APPLICATION FOR FINANC-
24 ING.—An application for financing
25 under subclause (I) shall include—

1 “(aa) a specific description
2 of the expenses for which the ad-
3 ditional financing is requested;
4 and

5 “(bb) an itemization of the
6 amount of each expense.

7 “(III) CONDITION ON ADDI-
8 TIONAL FINANCING.—A borrower may
9 not use any part of the financing
10 under this clause for non-business
11 purposes.

12 “(iv) LOANS BASED ON JOBS.—

13 “(I) JOB CREATION AND RETEN-
14 TION GOALS.—

15 “(aa) IN GENERAL.—The
16 Administrator may provide fi-
17 nancing under this subparagraph
18 for a borrower that meets the job
19 creation goals under subsection
20 (d) or (e) of section 501.

21 “(bb) ALTERNATE JOB RE-
22 TENTION GOAL.—The Adminis-
23 trator may provide financing
24 under this subparagraph to a
25 borrower that does not meet the

goals described in item (aa) in an amount that is not more than the product obtained by multiplying the number of employees of the borrower by \$65,000.

“(II) NUMBER OF EMPLOYEES.—

For purposes of subclause (I), the number of employees of a borrower is equal to the sum of—

“(aa) the number of full-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; and

“(bb) the product obtained by multiplying—

“(AA) the number of part-time employees of the borrower on the date on which the borrower applies for a loan under this subparagraph; by

“(BB) the quotient obtained by dividing the average number of hours each

1 part time employee of the
2 borrower works each week
3 by 40.

4 “(v) NONDELEGATION.—Notwith-
5 standing section 508(e), the Administrator
6 may not permit a premier certified lender
7 to approve or disapprove an application for
8 assistance under this subparagraph.

9 “(vi) TOTAL AMOUNT OF LOANS.—
10 The Administrator may provide not more
11 than a total of \$4,000,000,000 of financ-
12 ing under this subparagraph for each fiscal
13 year.”.

14 (b) PROSPECTIVE REPEAL.—Effective 2 years after
15 the date of enactment of this Act, section 502(7) of the
16 Small Business Investment Act of 1958 (15 U.S.C.
17 696(7)) is amended by striking subparagraph (C).

18 (c) TECHNICAL CORRECTION.—Section 502(2)(A)(i)
19 of the Small Business Investment Act of 1958 (15 U.S.C.
20 696(2)(A)(i)) is amended by striking “subparagraph (B)
21 or (C)” and inserting “clause (ii), (iii), (iv), or (v)”.

1 ***TITLE III—OTHER MATTERS***

2 ***SEC. 301. SMALL BUSINESS INTERMEDIARY LENDING PILOT***
 3 ***PROGRAM.***

4 (a) *IN GENERAL.*—Section 7 of the Small Business Act
 5 (15 U.S.C. 636) is amended by striking subsection (l) and
 6 inserting the following:

7 “(l) *SMALL BUSINESS INTERMEDIARY LENDING PILOT*
 8 *PROGRAM.*—

9 “(1) *DEFINITIONS.*—In this subsection—

10 “(A) the term ‘eligible intermediary’—

11 “(i) means a private, nonprofit entity
 12 that—

13 “(I) seeks or has been awarded a
 14 loan from the Administrator to make
 15 loans to small business concerns under
 16 this subsection; and

17 “(II) has not less than 1 year of
 18 experience making loans to startup,
 19 newly established, or growing small
 20 business concerns; and

21 “(ii) includes—

22 “(I) a private, nonprofit commu-
 23 nity development corporation;

24 “(II) a consortium of private,
 25 nonprofit organizations or nonprofit

1 *community development corporations;*
2 *and*

3 “(III) *an agency of or nonprofit*
4 *entity established by a Native Amer-*
5 *ican Tribal Government; and*

6 “(B) *the term ‘Program’ means the small*
7 *business intermediary lending pilot program es-*
8 *tablished under paragraph (2).*

9 “(2) *ESTABLISHMENT.—There is established a 3-*
10 *year small business intermediary lending pilot pro-*
11 *gram, under which the Administrator may make di-*
12 *rect loans to eligible intermediaries, for the purpose*
13 *of making loans to startup, newly established, and*
14 *growing small business concerns.*

15 “(3) *PURPOSES.—The purposes of the Program*
16 *are—*

17 “(A) *to assist small business concerns in*
18 *areas suffering from a lack of credit due to poor*
19 *economic conditions or changes in the financial*
20 *market; and*

21 “(B) *to establish a loan program under*
22 *which the Administrator may provide loans to*
23 *eligible intermediaries to enable the eligible*
24 *intermediaries to provide loans to startup, newly*
25 *established, and growing small business concerns*

1 *for working capital, real estate, or the acquisi-*
 2 *tion of materials, supplies, or equipment.*

3 “(4) *LOANS TO ELIGIBLE INTERMEDIARIES.*—

4 “(A) *APPLICATION.*—*Each eligible inter-*
 5 *mediary desiring a loan under this subsection*
 6 *shall submit an application to the Administrator*
 7 *that describes—*

8 “(i) *the type of small business concerns*
 9 *to be assisted;*

10 “(ii) *the size and range of loans to be*
 11 *made;*

12 “(iii) *the interest rate and terms of*
 13 *loans to be made;*

14 “(iv) *the geographic area to be served*
 15 *and the economic, poverty, and unemploy-*
 16 *ment characteristics of the area;*

17 “(v) *the status of small business con-*
 18 *cerns in the area to be served and an anal-*
 19 *ysis of the availability of credit; and*

20 “(vi) *the qualifications of the applicant*
 21 *to carry out this subsection.*

22 “(B) *LOAN LIMITS.*—*No loan may be made*
 23 *to an eligible intermediary under this subsection*
 24 *if the total amount outstanding and committed*
 25 *to the eligible intermediary by the Administrator*

1 *would, as a result of such loan, exceed \$1,000,000*
2 *during the participation of the eligible inter-*
3 *mediary in the Program.*

4 *“(C) LOAN DURATION.—Loans made by the*
5 *Administrator under this subsection shall be for*
6 *a term of 20 years.*

7 *“(D) APPLICABLE INTEREST RATES.—*
8 *Loans made by the Administrator to an eligible*
9 *intermediary under the Program shall bear an*
10 *annual interest rate equal to 1.00 percent.*

11 *“(E) FEES; COLLATERAL.—The Adminis-*
12 *trator may not charge any fees or require collat-*
13 *eral with respect to any loan made to an eligible*
14 *intermediary under this subsection.*

15 *“(F) DELAYED PAYMENTS.—The Adminis-*
16 *trator shall not require the repayment of prin-*
17 *cipal or interest on a loan made to an eligible*
18 *intermediary under the Program during the 2-*
19 *year period beginning on the date of the initial*
20 *disbursement of funds under that loan.*

21 *“(G) MAXIMUM PARTICIPANTS AND*
22 *AMOUNTS.—During each of fiscal years 2010,*
23 *2011, and 2012, the Administrator may make*
24 *loans under the Program—*

1 “(i) to not more than 20 eligible inter-
2 mediaries; and

3 “(ii) in a total amount of not more
4 than \$20,000,000.

5 “(5) LOANS TO SMALL BUSINESS CONCERNS.—

6 “(A) IN GENERAL.—The Administrator,
7 through an eligible intermediary, shall make
8 loans to startup, newly established, and growing
9 small business concerns for working capital, real
10 estate, and the acquisition of materials, supplies,
11 furniture, fixtures, and equipment.

12 “(B) MAXIMUM LOAN.—An eligible inter-
13 mediary may not make a loan under this sub-
14 section of more than \$200,000 to any 1 small
15 business concern.

16 “(C) APPLICABLE INTEREST RATES.—A
17 loan made by an eligible intermediary to a small
18 business concern under this subsection, may have
19 a fixed or a variable interest rate, and shall bear
20 an interest rate specified by the eligible inter-
21 mediary in the application of the eligible inter-
22 mediary for a loan under this subsection.

23 “(D) REVIEW RESTRICTIONS.—The Admin-
24 istrator may not review individual loans made
25 by an eligible intermediary to a small business

1 concern before approval of the loan by the eligi-
2 ble intermediary.

3 “(6) *TERMINATION.*—*The authority of the Ad-*
4 *ministrator to make loans under the Program shall*
5 *terminate 3 years after the date of enactment of the*
6 *Small Business Job Creation and Access to Capital*
7 *Act of 2009.”.*

8 (b) *RULEMAKING AUTHORITY.*—*Not later than 180*
9 *days after the date of enactment of this Act, the Adminis-*
10 *trator shall issue regulations to carry out section 7(l) of*
11 *the Small Business Act, as amended by subsection (a).*

12 (c) *AVAILABILITY OF FUNDS.*—*Any amounts provided*
13 *to the Administrator for the purposes of carrying out sec-*
14 *tion 7(l) of the Small Business Act, as amended by sub-*
15 *section (a), shall remain available until expended.*

16 **SEC. 302. PROHIBITION ON USING TARP FUNDS OR TAX IN-**
17 **CREASES.**

18 (a) *IN GENERAL.*—*Except as provided in subsection*
19 *(b), nothing in this Act or the amendments made by this*
20 *Act shall be construed to limit the ability of Congress to*
21 *appropriate funds.*

22 (b) *TARP FUNDS AND TAX INCREASES.*—

23 (1) *IN GENERAL.*—*Any covered amounts may*
24 *not be used to carry out this Act or an amendment*
25 *made by this Act.*

1 (2) *DEFINITION.*—*In this subsection, the term*
2 *“covered amounts” means—*

3 *(A) the amounts made available to the Sec-*
4 *retary of the Treasury under title I of the Emer-*
5 *gency Economic Stabilization Act of 2008 (12*
6 *U.S.C. 5201 et seq.) to purchase (under section*
7 *101) or guarantee (under section 102) assets*
8 *under that Act; and*

9 *(B) any revenue increase attributable to*
10 *any amendment to the Internal Revenue Code of*
11 *1986 made during the period beginning on the*
12 *date of enactment of this Act and ending on De-*
13 *cember 31, 2010.*

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