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# THE COMMERCIAL REAL ESTATE AND ECONOMIC DEVELOPMENT ACT OF 2015

MAY 26, 2016.—Ordered to be printed

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

# R E P O R T

[To accompany S. 966]

The Committee on Small Business and Entrepreneurship, to which was referred the bill (S. 966) to extend the low-interest refinancing provisions under the Local Development Business Loan Program of the Small Business Administration, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

## I. INTRODUCTION

The CREED Act (S. 966) was introduced by the Committee's Ranking Member, Senator Jeanne Shaheen, for herself and Senator Johnny Isakson, on April 15, 2015. The bill's other co-sponsors as include: Senators Ayotte, Cantwell, Casey, Coons, Fischer, Franken and Hirono.

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.

S. 966 as introduced would have extended the 504 Loan Refinance (504 Refi) program for five years. During markup of the bill, Chairman Vitter put forward a substitute amendment to the bill which made two changes. The first change eliminated the five-year sunset and made the refinance authority available permanently. The second change allows the program to operate only during fiscal

years in which the regular 504 loan program is operating at zero subsidy. The bill, as amended, was approved unanimously by voice vote.

The provisions of this bill later became law as part of the Fiscal Year 2016 Consolidated Appropriations Act, H.R. 2029 (Public Law No. 114–113).

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

The purpose of the CREED Act is to permanently re-instate a version of the Small Business Administration's 504 Refi, a two-year initiative that permitted refinancing of existing qualified commercial real estate debt through the SBA's local economic development business loan guaranty program, also known as the 504 loan program. When the 504 Refi program was active, more than 2,300 small firms refinanced more than $5 billion.

The 504 Refi program expired on September 27, 2012, but small businesses continued to desire access to the capital invested in their businesses. On the last day of the trial period, more than 400 businesses applied. While the economy is better today than when the program ended, and lending to small businesses is starting to recover, many banks today cannot or will not finance additional commercial real estate. Those that do often will not refinance small business equipment or commercial real estate with a long-term or low fixed-rate.

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's 504 Refi 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. The loans are intended to foster local economic development and to create or preserve jobs. A 504 loan project consists of three elements: a loan from a private sector lender covering 50 percent of the principal; a second mortgage from an SBA Certified Development Company backed by a 100 percent government guaranteed debenture, covering 40 percent of the principal; and an equity contribution from the small business owner to cover the remaining 10 percent.

The ability to refinance owner-occupied commercial real estate debt through the 504 loan program was first created as part of the American Recovery and Reinvestment Act of 2009 (P.L. 111–5) on February 17, 2009. Congress added additional refinance authority in 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 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 legisla-

tive 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 504 Refi 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.

The Senate has considered an extension of the 504 Refi program many times since 2012, as free-standing bills and amendments. The following information describes the various efforts.

During the 112th Congress, on April 25, 2012, Small Business Committee Ranking Member Olympia Snowe introduced, S. 2364, a bill to extend the 504 refi program for an additional year. Senator Snowe introduced S. 2364 on behalf of herself, Chair Mary Landrieu and Senator Jeanne Shaheen, along with Senators Isakson, Thune, Klobuchar, Tim Johnson, and Pryor. The bill 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 bi-partisan vote, 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.

During the 113th Congress, the Administration requested authority to reinstate the 504 Loan Guaranty Refinance program as part of its FY2015 Budget Request.

On February 12, 2013, Chair Landrieu introduced S. 289, the Commercial Real Estate and Economic Development (CREED) Act of 2013, which was identical to S. 966 that is the subject of this report. Specifically, S. 289 sought to restore for five years the 504 Refi program that was enacted by Section 1122 of the Small Business Jobs Act of 2010 and had expired on September 27, 2012. The bill was marked up on September 10, 2013, with a Risch-Landrieu amendment that would have allowed the program to operate only during fiscal years in which the SBA's base 504 program operated at zero subsidy. The bill, as amended, was approved unanimously by voice vote.

Also during the 113th Congress, language to extend the 504 Refi program was voted on favorably two times during the appropriations process. On July 25, 2013, the Senate Appropriations Subcommittee on Financial Services and General Government reported S. 1371, its Fiscal Year 2014 appropriations bill, with a provision to reinstate the 504 Refi program under the Business Loans Program Account. On July 24, 2014, the Senate Appropriations Subcommittee on Financial Services and General Government reported its Fiscal Year 2015 appropriations bill with a provision to reinstate the 504 Refi program under the Business Loans Program Account. No bill number exists. The bill as reported is only available on the Appropriations website.

During the 114th Congress, the Administration requested authority to reinstate the 504 Loan Guaranty Refinance program as part of its FY2016 Budget Request. The budget justification reflects that the cost of this program has a zero subsidy, and that is because it is covered entirely through fees paid by the borrowers and lenders. Further, the budget tables, on Page 1197 of the Budget for Fiscal Year 2016, provided information that the loans from the Commercial Real Estate Refinance Program are performing better than budget analysts estimated. The budget projects a negative reestimate for the 504 Loan Guaranty Refinance program of $101 million in FY15.

The CREED Act of 2015 received letters of support from the National Association of Development Companies; Small Business Majority; U.S. Chamber of Commerce; National Small Business Association; Smaller Business Association of New England; Women Impacting Public Policy; Association of Women Business Centers; Consumer Bankers Association; American Bankers Association; Independent Community Bankers of America; National Association of Development Companies; Granite State Development Corporation in New Hampshire; Northeast Economic Development Company in Pennsylvania; The Pennsylvania Community Development and Finance Corporation; DelVal Business Finance Corp in Pennsylvania; SEDA–COG Local Development Corporation in Pennsylvania; Regional Development Funding Corporation in Pennsylvania; Bridgeway Capital CDC in Pennsylvania; EDC Finance Corporation CDC in Pennsylvania; California Association for Micro Enterprise Opportunity; Tulsa Economic Development Corporation in Oklahoma; Small Business Capital Corporation in Oklahoma; REI Oklahoma; CSRA Business Lending in Georgia; Small Business Ac-

cess Partners in Georgia; Capital Partners in Georgia; Georgia Small Business Capital; Small Business Assistance Corporation in Georgia; Southern Georgia Area Development Corporation; Georgia Small Business Lender; Coastal Area District Development Authority in Georgia; Georgia Certified Development Corporation; and North Georgia Certified Development Corporation.

Previous efforts to reinstate the 504 Refi program were supported by a number of groups, including the: U.S. Chamber of Commerce, International Franchise Association, Consumer Bankers Association, Independent Community Bankers of America, National Small Business Association, Association for Corporate Growth and the National Association of Women Business Owners.

The CREED Act provisions were enacted as part of the Fiscal Year 2016 Consolidated Appropriations Act, H.R. 2029 (Public Law No. 114–113).

## 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 Refi 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. 966, the Commercial Real Estate and Economic Development Act of 2015, extends the availability of a low-interest commercial real estate refinance program through the Small Business Administration's 504/CDC loan guaranty 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 Vitter substitute 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 April 23, 2015.

A motion to report the Commercial Real Estate and Economic Development Act of 2015, to extend the availability of low-interest refinancing provisions under the Local Development Business Loan Program of the Small Business Administration, as amended, was agreed to by voice vote as part of a manager's package that included seven additional bills. The following Senators were present: Vitter, Risch, Fischer, Gardner, Ernst, Ayotte, Enzi, Shaheen, Cantwell, Cardin, Heitkamp, Booker, Coons, Hirono, and Peters. Senator Paul requested that he be recorded in opposition to the bill.

## 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:

JUNE 3, 2015.

Hon. DAVID VITTER,
*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. 966, the Commercial Real Estate and Economic Development Act of 2015.

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

Sincerely,

KEITH HALL.

Enclosure.

*S. 966—Commercial Real Estate and Economic Development Act of 2015*

In 2010, the Small Business Jobs Act (Public Law 111–240) authorized the Small Business Administration (SBA), through the Certified Development Company (CDC) Loan Program, to temporarily 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.) That temporary authority ended in 2012. S. 966 would authorize the program to operate during any fiscal year that the CDC loan program operates at no cost to the federal government. If the zero-cost condition is not met, then the refinance option would not be authorized that year.

In 2015, SBA received an appropriation of $45 million for the CDC program, allowing the agency to guarantee $7.5 billion in debt at an estimated subsidy rate of 0.6 percent; over the 2010–2014 period, the subsidy rate for the CDC loan guarantee program ranged from zero to 2.02 percent. (The subsidy cost is the estimated long-term cost to the government of a loan guarantee, calculated on a net-present-value basis.)

Because those subsidy rates can fluctuate CBO cannot predict the years in which the refinance program would be authorized to operate. However, CBO estimates that implementing S. 966 would not affect discretionary spending, because in the years the agency would be authorized to operate the program, it also would be authorized to collect fees sufficient to offset the subsidy cost. Enacting S. 966 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

S. 966 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 contact for this estimate is Susan Willie. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for 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 2015" or the "CREED Act of 2015."

*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.

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