CARL LEVIN
MICHIGAN

United States Senate

WASHINGTON, DC 20510–2202

May 5, 2011

Karen Mills
Administrator
Small Business Administration
409 Third Street SW
Washington, DC

Dear Administrator Mills:

I write again to raise concerns regarding the Small Business Administration's (SBA) interpretation of a provision in the Intermediary Lending Pilot Program (ILP), enacted as part of the Small Business Jobs Act of 2010 (P.L. 111-240). As the Senate sponsor of the ILP, my specific concern is with the SBA's interpretation of Section 1131(a)4(B) of the statute intended to cap the amount any single intermediary could borrow from SBA under this pilot program. The interim final rule contained in regulations published in the Federal Register on April 1, 2011 incorrectly interprets Section 1131(a)4(B) as a $1 million cap on total debt to SBA. This letter outlines how SBA's interpretation of this section of the ILP will have an absurd result on the outcome of the program.

The SBA's interpretation of the ILP would place an overall cap of $1 million on how much a participating intermediary can borrow from the SBA under all SBA programs, and still be eligible for the ILP. The legislative intent behind the $1 million cap was to limit an ILP loan to any single intermediary to $1 million, not to factor in participation in other SBA programs as part of the $1 million cap.

The SBA should not read the ILP language in a vacuum but consider the overall intent and purpose of the underlying Act. The Small Business Jobs Act, on page 2508, under Sec. 1113, "Maximum Loan Limits Under Microloan Program," increases the amount micro lenders can borrow from SBA from $3.5 million to $5 million. Capping ILP participants' total SBA debt at $1 million contradicts the larger purpose of the Act which is to increase loan caps, not lower them. Specifically, for lenders making loans of up to $50,000, the Act increases the SBA loan cap to $5 million. The ILP program allows for larger loans: up to $200,000. It makes no sense for SBA to increase loan caps to $5 million for lenders making smaller loans while lowering the loan cap to $1 million for lenders making larger loans.

On page 2513 of P.L. 111-240, under subparagraph (G) "Maximum Participants", the Small Business Jobs Act limits the number of participants to 20, and the program level to $20 million. There are also various documents describing the ILP, including report language and CBO cost estimates explain that up to 20 non-profit lending intermediaries around the country can get up to $1 million in loans for a cost of $20 million per year. This was done in order to spread the loans around and limit the risk to SBA. This description of the program clearly shows the bill was meant to cap individual loans under the program at $1 million. There is not language in P.L. 111-240 or language in any other iteration, stating that money from other programs should be counted.

In drafting the ILP, Senate Legislative Counsel borrowed language from the microloan program as a model for the program. It was not obvious to the Congressional requestors or Committee staff or to others that such language could be interpreted as capping the aggregate amount of debt that could be outstanding to SBA from programs other than from the ILP.

The microloan program does include an aggregate cap on outstanding debt to SBA which includes debt from the 5(g), 7(a), and 8(a) programs and titles III, IV and V of the Small Business Investment Act. However, no micro lenders are getting these types of loans and therefore do not have outstanding debt from these programs. The reality is that SBA is only counting outstanding debt from the microloan program, not all the other programs listed in the SBA Act. This is how the ILP program should also be interpreted and applied, and it would be absurd to interpret the new provisions as taking debt from other programs when not even the microloan intermediaries have debt from other programs.

Whereas the microloan program treats intermediaries like the loan recipient, not the bank, the ILP is structured differently. Under the ILP the intermediaries are acting as the bank. Under the ILP intermediaries borrow $1 million from SBA and turn around and become the banker by lending that money in $200,000 increments to small businesses. It therefore does not make sense for SBA to treat ILP intermediaries as the loan recipient by imposing an aggregate cap on outstanding SBA debt.

The ILP was developed with input from micro lenders, most notably Northern Initiatives, a company based in Michigan's Upper Peninsula. The idea was to give micro lenders an additional loan product to help them meet the needs of those small businesses they serve that had graduated from the microloan program but were still not able to get 7(a) loans. The idea was to provide a seamless lending stream to these borrowers from the micro lenders that were already working with them.

SBA's current interpretation of the ILP is that there should be an aggregate cap on all outstanding SBA debt for participating intermediaries. This interpretation may be based on the fact that an aggregate cap exists for the 7(a) loan program. This is misguided because the 7(a) aggregate cap does not place the limit on a bank's overall SBA lending. It simply caps the size of the SBA loan the bank may make to each small business. This was also the intent for the ILP: to limit SBA loans to intermediaries to $1 million each and to cap at $200,000 the loans the intermediary may make to small businesses.

I am aware that other SBA programs may include aggregate caps, but those too are caps on the size of the loans going to a small business, not to the lending entity. This is why it is inconsistent for SBA to interpret the ILP as requiring an aggregate cap on the lending institution, in this case the intermediary.

The result of SBA's interim final rule means that most experienced and proven micro lenders will not be able to participate in the ILP, the exact group for which the legislation was developed. This is an absurd outcome given the experience and proven track record of this group of intermediaries. It also potentially diminishes the program's ability to get much needed capital to small businesses so that they can grow and create jobs. The pilot program was developed to use the most effective intermediaries as possible in order to make it successful. The SBA's elimination of the most experienced micro lenders undermines this goal and potentially limits the number of jobs that can be created under the ILP.

I hope the SBA will consider the points I have made in this letter and modify how it applies loan limits to the ILP so that they are not counted as an aggregate cap. Enclosed are additional documents for SBA's consideration including, Title XVIII of Report 109-361 that accompanied S. 3778, reported by the Small Business and Entrepreneurship Committee on July 27, 2006, which included the ILP, the CBO cost estimate for S.2869, which included the ILP, my April 1, 2011 letter to you on this topic, and a statement from Dennis West, President, Northern Initiatives.

Thank you for your consideration of my concerns and of the attached documentation. Please include them in the public record regarding SBA's interpretation of the ILP.

Sincerely,

Carl Levin

Carl Levin

Enclosures

TITLE XVIII–SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM

This bill authorizes a new three-year pilot program in which the SBA may make loans to local non-profit lending intermediaries, and the intermediaries can then re-loan the funds to small businesses. The program seeks to address the capital needs of start-up and expanding small businesses that require flexible capital but may not be eligible for private or public venture capital. The pilot program is aimed at businesses that desire larger loans than can be provided under the SBA's Microloan program and that, for a variety of reasons, including lack of sufficient collateral, are unable to secure the credit with practicable terms through conventional lenders, even with the assistance of the 7(a) or 504 loan programs.

Through this pilot program, the SBA is authorized to make one percent, 20-year loans, on a competitive basis, to up to 20 non-profit lending intermediaries around the country, with a maximum amount of $1 million per loan. Intermediaries will not pay any fees or provide any collateral for their loans. Each 20-year loan will capitalize a revolving loan fund through which the intermediary will make loans of between $35,000 and $200,000 to small businesses. These subordinated-debt loans will be more flexible in collateral and general underwriting requirements than the SBA's other lending programs. In addition, intermediaries will assist their borrowers in leveraging the SBA funds to obtain additional capital from other sources. The pilot will test the impact of this program on job creation in rural and urban areas, especially among under-employed individuals.

Unlike the SBA Microloan Program, the intermediaries will receive no technical assistance grants. All administrative costs or technical support provided to small business borrowers will be covered by the interest-rate spread between the lending intermediary's one percent loan from the SBA and the interest rate on loans made to the small business borrowers, the rate for which will be set by the intermediary.

This program design has been utilized successfully in a similar program at the U.S. Department of Agriculture (USDA) that has provided loans to non-profit lending intermediaries since 1985. Under that program, no intermediaries have defaulted on their loans from the USDA, which are made at one percent and have terms of 30 years, and only two percent of intermediaries are currently delinquent on their loans. Unlike the USDA's program, which is limited to rural areas, the pilot will serve both urban and rural regions.

This pilot is designed to reach small businesses that 7(a) lenders will not reach due to the perceived higher risk of these businesses. Many states are fortunate to have a healthy network of community based, non-profit intermediary lenders that are experienced and successful in meeting the needs of small businesses. This pilot program will give them additional tools to stimulate the economy by creating jobs, including jobs for low income individuals--and by facilitating new lending and investing in businesses.

This section incorporates Senator Levin's bill, The Small Business Intermediary Lending Pilot Program Act of 2005, S. 416. This pilot was also included as part of the Small Business Administration 50th Anniversary Reauthorization Act of 2003, S. 1375, but was not included in the final reauthorization bill signed into law.

CONGRESSIONAL BUDGET OFFICE
COST ESTIMATE

January 26, 2010

S. 2869
Small Business Job Creation and Access to Capital Act of 2009

As ordered reported by the Senate Committee on Small Business and Entrepreneurship on December 17, 2009

SUMMARY

S. 2869 would make changes to several business loan and loan guarantee programs operated by the Small Business Administration (SBA). The bill also would establish a new pilot program, modeled after SBA's microloan program, to make loans to intermediaries that would then make loans to new and expanding small businesses. Based on information from SBA, CBO estimates that implementing S. 2869 would cost $23 million over the 2010-2015 period, assuming appropriation of the necessary amounts. CBO estimates that enacting S. 2869 would have no effect on direct spending or revenues.

S. 2869 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of S. 2869 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By Fiscal Year, in Millions of Dollars						
	2010	2011	2012	2013	2014	2015	2010-2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	8	8	8	0	0	0	24
Estimated Outlays	4	6	7	3	2	1	23

BASIS OF ESTIMATE

For this estimate CBO assumes that S. 2869 will be enacted early in 2010, the necessary amounts will be appropriated each year, and spending will follow historical patterns. Based on information from SBA, CBO estimates that implementing S. 2869 would cost $23 million over the 2010-2015 period, assuming appropriation of the necessary amounts.

The budgetary accounting for SBA's direct loan and loan guarantee programs is governed by the Federal Credit Reform Act of 1990, which requires an appropriation of the subsidy and administrative costs associated with loan guarantees and loan operations. The subsidy cost is the estimated long-term cost to the government of a loan or loan guarantee, calculated on a net-present-value basis, excluding administrative costs. Administrative costs, recorded on a cash basis, include activities related to making, servicing, and liquidating loans as well as overseeing the performance of lenders.

Small Business Intermediary Lending Program

The bill would authorize a three-year program to provide loans ranging in size from $35,000 to $200,000 to nonprofit lenders that would, in turn, make loans to eligible small businesses. The program, modeled after the microloan program, would feature a 20-year loan term, an interest rate of 1 percent, and a two-year grace period before principal and interest payments would be first due. The bill would authorize $20 million in loans for each of fiscal years 2010 through 2012. Based on information from SBA, CBO estimates that the subsidy rate for the program would be about 38 percent; the difference between the government's borrowing rate and the rate SBA would charge the borrowers makes up nearly half of the subsidy cost. We estimate that the subsidy cost for the authorized loan amounts would be $23 million over the 2010-2015 period.

Business Loan Programs

Other provisions of S. 2869 would make changes to several of SBA's existing business loan programs. The bill would:

- Increase the maximum size of loans that SBA would be authorized to guarantee under the 7(a) and 504 loan programs;
- For a limited time, increase the guarantee percentage on 7(a) loans from up to 85 percent to 90 percent of the amount of the loan; and
- Increase the maximum size of loans intermediaries would be authorized to make to small businesses under the microloan program and the maximum amount an intermediary can loan to a single borrower.

SBA's 7(a) program provides limited guarantees on loans made by certain lending institutions to small businesses; the 504 program (also known as the certified development company program) provides guarantees on debentures issued by certified development companies to provide funding to small businesses for major fixed assets. The microloan program provides direct loans to nonprofit lenders which then offer loans to small businesses just starting up, whose capital needs are too small to qualify for the 7(a) program. Estimated subsidy rates for those programs range from zero percent for the 504 program to about 12 percent for the microloan program.

Based on information from SBA, CBO expects that changing the loan terms would not significantly affect the programs' estimated subsidy rates. Thus, CBO estimates that implementing those changes would not significantly affect spending subject to appropriation.

INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

S. 2869 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would benefit tribal governments by establishing a grant program for tribal agencies to provide loans to new and growing businesses. Any costs to tribal governments of participating in the program would be incurred voluntarily.

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