



Credit Union National Association

601 Pennsylvania Ave., NW | South Building, Suite 600 | Washington, DC 20004-2601 | PHONE: 202-638-5777 | FAX: 202-638-7734

cuna.org

April 26, 2013

Patrick Kelley  
Deputy Associate Administrator  
U.S. Small Business Administration  
409 Third Street SW  
Washington, DC 20416

Re: 504 and 7(a) Loan Programs Proposed Rule;  
RIN 3245-AG04

Dear Mr. Kelley:

The Credit Union National Association (CUNA) appreciates the opportunity to submit comments to the Small Business Administration (SBA) regarding proposed changes to the 504 and 7(a) Loan Programs, which are the SBA's two primary business loan programs authorized under the Small Business Investment Act<sup>1</sup> and Small Business Act<sup>2</sup>, respectively. By way of background, CUNA is the largest credit union advocacy organization in the country, representing approximately 90% of the nation's 7,000 state and federal credit unions, which serve over 96 million members.

The changes proposed by the SBA are intended to "strip away regulatory restrictions that detract from the 504 Loan Program's core job creation mission as well as the 7(a) Loan Program's positive job creation impact on the American economy." CUNA strongly supports efforts of federal agencies to eliminate unnecessary, outdated regulatory restrictions on credit unions. In that connection, we appreciate and support the SBA's initiative to review the 504 and 7(a) Programs from a regulatory relief perspective.

Credit unions participate in both the 504 and 7(a) Programs.<sup>3</sup> The primary purpose of these programs is to fill the financing needs of new and existing small businesses. CUNA and credit unions are strong supporters of these loan programs, as we believe their objectives are laudable. At year-end 2012, there were 347 credit unions with over 8,100 SBA loans outstanding, which totaled \$921 million; up from \$713 million in 2011.

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<sup>1</sup> 15 U.S.C. 695.

<sup>2</sup> 15 U.S.C. 631.

<sup>3</sup> The 504 Program provides long-term fixed asset financing to small businesses for the purchase or improvement of land, buildings, and major equipment purchases, in an effort to facilitate the creation of jobs and local economic development. The 7(a) Program helps eligible small businesses obtain credit when they cannot obtain credit elsewhere.



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## **CUNA's Views on the Proposed Changes**

### *Personal Resources Test (§ 120.102)*

To be eligible for financing under either the 504 or 7(a) Program, an applicant must be unable to “obtain credit elsewhere.” As part of the determination of whether the applicant is able to obtain credit elsewhere, a personal resources test must be conducted. The personal resources test includes, among other things, an assessment of the liquid assets of each owner of 20% or more of the applicant company.

The SBA is proposing to eliminate the personal resources test from the regulations for both loan programs. The SBA is concerned that even borrowers whose principals have significant personal resources may be unable to obtain long-term fixed asset financing from private sources at reasonable rates. It is unclear whether the existence of personal resources is necessary to obtain commercial credit on reasonable terms. The SBA is seeking comments on the appropriateness of using personal resources as an indirect means of determining whether credit is available from private sources.

CUNA supports the elimination of the personal resources test from both loan programs, as we believe this will facilitate the use of these programs. We agree with the SBA that the core business loan program missions, including the job creation mission of the 504 Program and the small business credit support mission of the 7(a) Program, would best be served by focusing on the statutory requirements regarding the availability of credit on reasonable terms without attempting to document and enforce precise determinations regarding personal resource contributions.

### *“9-Month Rule” (§120.882)*

Currently, the 504 Program allows financing of expenses toward a project only if the expenses were incurred “within nine months prior to receipt by SBA of a complete loan application, unless the time limit is extended or waived by SBA for good cause.” The SBA proposes to eliminate this 9-month limitation and permit financing of expenses toward a project regardless of when the expenses were incurred.

In practice, exceptions to the 9-month rule have been granted regularly because, generally speaking, the date the expense was incurred is a poor indicator as to whether the expense was directly attributable to the applicant’s 504 project. For example, because of the weak economy, many businesses’ expansion plans have been delayed or placed on hold. Now, in the post-recession recovery period, many small business owners are preparing to resume their plans only to discover that expenditures already made, or the method of financing those expenditures, results in those costs not being eligible for 504 financing. In such instances, we agree that exceptions to the 9-month rule are appropriate and consistent with the intent of the Program.

In light of the fact that, as reported by the SBA, in the last five years the agency has approved 81% of such requests, we support the elimination of the 9-month rule.

## **SBA Support of Increasing the Credit Union Member Business Lending Cap**

As amended by the Credit Union Membership Access Act of 1998, the Federal Credit Union Act prohibits credit unions from lending more than 12.25% of their assets to small businesses. Federal Credit Union Act, 12 U.S.C. § 1757a(a).

Credit unions could lend an additional \$13 billion to small businesses, helping them create over 146,000 new jobs in the first year after enactment if Congress were to increase the statutory cap on credit union business lending. This can be done at no cost to taxpayers and without increasing the size of government. Credit unions do not need taxpayer assistance to encourage them to do more business lending; credit unions only need authority from Congress.

We strongly encourage the SBA to follow the lead of the Obama Administration, including the U.S. Department of the Treasury, and support Congressional efforts to increase the credit union member business lending cap. CUNA and our nation's credit unions are hopeful that the cap will be lifted, such as through the Credit Union Small Business Jobs Creation Act (H.R. 688), which would allow well-capitalized credit unions operating near the cap to increase their business loan offerings to 27.5% of total assets, if they receive approval by the National Credit Union Administration.

While the SBA-guaranteed portion of a 7(a) Loan is not counted against a credit union's business lending cap (12 U.S.C. 1757a(c)(1)(B)(iv)), there are approximately 500 credit unions that are currently constrained by or actively managing the cap.<sup>4</sup> As it relates to SBA and non-SBA lending, the cap restricts some credit unions from fulfilling the small business financing needs of their members. As the SBA is well aware, America's small businesses are the engine of growth of our nation's economy. Again, we urge the SBA to support increasing the credit union member business lending cap.

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Thank you for the opportunity to express our views on the SBA's proposed changes to the 504 and 7(a) Loan Programs. If you have any questions about our comments, please do not hesitate to give Senior Vice President and Deputy General Counsel Mary Mitchell Dunn or me a call at (202) 508-6743.

Sincerely,



Luke Martone  
Sr Asst General Counsel for Regulatory Advocacy

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<sup>4</sup> In a related effort, we urge SBA support for a CUNA amendment (included in our testimony two weeks ago) that would allow the non-guaranteed portion of an SBA loan to also be excluded from the member business lending cap.