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United States Senate

COMMITTEE ON SMALL BUSINESS & ENTREPRENEURSHIP

WASHINGTON, DC 20510-6350

April 3, 2008

VIA FACSIMILE & FIRST-CLASS MAIL

The Honorable Steven C. Preston
Administrator
U.S. Small Business Administration
409 Third Street, S.W.
Washington, D.C. 20416

Re: Compensation to CDCs for 504 Loan Liquidation Expenses

Dear Administrator Preston:

I am writing to urge the Small Business Administration to delay publishing a notice in the Federal Register that would interfere with the liquidation of defaulted 504 loans. Specifically, I am referring to the Agency's intention to publish a notice tomorrow that would reduce the compensation rates for costs incurred by authorized Certified Development Companies to liquidate defaulted 504 loans and then 90 days after the publication of that notice to suspend all compensation for any 504 loan debenture not yet purchased.

I understand that the Agency made a mistake in not requesting funding to reimburse authorized Certified Development Companies for these purposes in its FY2008 and FY2009 budgets, and I appreciate your leadership in admitting that mistake to our Committee. Nevertheless, I do not believe the solution is suspending reimbursements, which will exacerbate SBA's liquidation problems. We are told that SBA has nearly 1,000 loans, worth about \$404 million, in some state of liquidation spread among the Little Rock, Fresno and district offices, with only about eight staff dedicated to 504 liquidation, supported by district counsel who have many responsibilities. The growing number of loans in liquidation validates my concern and opposition to the Agency's elimination of the almost 200 liquidation staff in the districts more than four years ago. If the Agency stops compensating authorized Certified Development Companies that are currently helping liquidate defaulted loans, it will reduce their activities and exacerbate the SBA's existing problems. A better solution is for the Agency to right its budget mistake by seeking permission from the appropriators to reprogram funding to cover the estimated amounts needed, a modest \$1 million or \$2 million by SBA's estimates, or send up an amended budget request for FY2009, as the President did in July 2005 for the FY2006 budget, requesting the appropriate funding. Otherwise, the longer SBA takes to liquidate loans, the less ability it has to recover funds through the property or from the guarantors, increasing the risk of writing off loans that average about \$500,000.

It would be far more cost-effective to seek the modest amounts for compensation than to increase the number of loans SBA must write off. The Administration should also consider requesting additional funding for the now obvious shortage of liquidation staff.

Further, there is a question as to whether the SBA even has the right to change the maximum compensation rates that were published in the final rule on April 12, 2007, without putting the change out for public comment. We understand from conversations with staff that the SBA is relying upon a provision in the Administrative Procedures Act to take the action in question. Before publishing this notice, please submit to the Committee an explanation, in detail, with statutory and regulatory references, of what legal justification the Agency is relying upon to suspend the notice and comment procedure its proposed action would normally require.

Last, my staff sought information from the SBA regarding this issue a month ago, on February 29th, 2008. The Agency never responded until it requested a briefing for yesterday, in which the Committee was informed that the Agency would publish the notice in less than 48 hours. Given the Agency's silence for a month and then the very short notice, I would hope that you would delay publication of the changed and suspended compensation fees, at the very least until the Committee receives the Agency's legal justification for moving forward.

Sincerely,



John F. Kerry
Chairman