



***Testimony
Of
C. Earl Peek
President
Diamond Ventures***

***Information Policy, Census, and National Archives Subcommittee
Oversight and Government Reform Committee
Thursday, September 24, 2008
2154 Rayburn HOB
10:00 a.m.***

***“How Information Policy Affects the Competitive Viability of
Small and Disadvantaged Business in Federal Contracting”***

Good morning Mr. Chairman, Ranking Member Turner and Members of the Information Policy, Census, and National Archives Subcommittee, Oversight and Government Reform Committee. My name is C. Earl Peek. During my 22 year career, which started out as a CPA and evolved into my current role as President of a venture capital company, I have served as a Commercial Lender with an SBA Community Development Corporation, Senior Manager and Lender with an economic development firm and as Vice-President for a minority owned bank and a major regional bank. I have had the privilege of working with thousands of entrepreneurs. I have financed hundreds of successful businesses after I carefully executed extensive evaluations of those businesses' financial viability and management capacities. As a result of my experience and expertise, I have counseled hundreds of minority and women-owned businesses across this nation, and became all too familiar with the overwhelming need for venture capital for these businesses.

Without a doubt, access to capital is the most critical issue for minority and women-owned businesses. Surprisingly, the SBA is the primary culprit of discriminatory and restrictive practices that prevent minority and women-owned business from accessing or receiving patient capital (i.e. venture capital). Prominent researcher, Dr. Timothy Bates, a well respected and longstanding researcher of Minority businesses since the 1970s, and Dr. William Bradford, have provided numerous reports that outline the practices which prevent minority and women-owned businesses access to venture capital.ⁱ Studies from 2006, 2007 and particularly from 2008, revealed documented truths about the detrimental effects of discriminatory practices.

However, Dr. Bates' findings also demonstrated that investments in minority and women-owned businesses were profitable; and when compared to the market returns of investments in non-minority owned businesses, market returns of comparable minority and women-owned businesses were just as successful as the non-minority owned businesses. Even though Dr. Bates' studies should encourage the SBA to explore expanding minority and women-owned businesses' participation in programs like the Small Business Investment Company program ("SBIC"), the SBA continues to use exclusionary evaluation criteria and methodologies that further deny minority and women-owned businesses access to SBIC capital resources or assistance. In fact, minority and women-owned businesses have proven to be more than qualified and capable to participate in programs like the SBA's SBIC because of their tenacity to prevail regardless of the restrictive and discriminatory practices. The reality is that venture capital opportunities are readily accessible for **only** non-minority owned businesses.

I speak passionately about this issue because I am the President of one of "those" minority owned businesses. My company, Diamond Ventures, LLC, along with other minority companies, has sought to obtain a New Markets Venture Capital ("NMVC") license and a SBIC License to become a provider of capital to underserved groups, such as minorities and women-owned businesses. However, my firm has been engaged in litigation against the SBA for the past 7 years, due to the SBA's denial of our applications based on discriminatory practices and unfair exclusionary qualifications screening procedures. Today, as an advocate for minority and women-owned businesses and as a follower of Dr. Bates' research, I have the privilege to provide specific examples of the exclusionary and discriminatory practices plaguing the minority and women-owned business constituency. For instance:

1. In a February 16, 2006 letter from the Honorable Senator John F. Kerry to the SBA's former Administrator, the Honorable Hector V. Barreto, Senator Kerry noted that:
 - a. "There has been a consistent and significant decline in the number of Small Business Investment Company (SBIC) financings to minority and women-owned firms, according to statistics compiled by the [SBA's] Investment Division."ⁱⁱ
 - b. "According to a study conducted by the Ewing Marion Kauffman Foundation, less than 1% of the \$250 billion in venture capital dollars nationwide is made available to meet the needs of the country's 4.4 million minority business owners...and [although] women own approximately 40% of all businesses in the U.S., they receive less than 5% of all venture capital investment."ⁱⁱⁱ
 - c. Between fiscal years 2000 and 2004, an already low participation rate for minority owned business in SBIC financings fell 50%; from 20.4% to as low as 10.6% with the largest disbursement of financing dollars even lower at 5.2% in 2004.^{iv}
 - d. During the same time frame, women-owned businesses represented a drop in participation from 5.9% of all SBIC financings in 2000 to 3.0%, with even lower participation at 2.6% in 2002. Disbursement of financing dollars to women-owned firms has only gotten as high as 2.2% in 2004.^v

2. Pursuant to a Dr. Bates' April 2008, 107-page report with references to prior reports conducted by Dr. William Bradford, the Kauffman Foundation, the Minority Business Development Agency, the Milken Institute, the Minority Business Enterprise Legal Defense and Education Fund, and the Dow Jones/Wall Street Journal reveals that:
 - a. ...[O]f over 250 applicants screened by SBA during the 2000 – 2004 period. [Dr. Bates'] review entailed comparing the traits of the applicants licensed by SBA to dispense capital in the SBIC program versus the applicants that were not licensed. This exercise highlighted the specific criteria employed by SBA as it sorted through, evaluated, and ultimately accepted or rejected SBIC applicants. To a striking degree, this evaluation process was conducted by SBA in a manner that makes it extraordinarily difficult for African Americans specifically, and minorities generally, to qualify”^{vi}
 - b. “[The Minority and women-owned businesses] market segment is... underserved and attractive returns should be available to funds choosing to specialize in financing this client group.”^{vii}
 - c. The evaluation criteria utilized by SBA in this case were highly appropriate if the objective of the Agency is to minimize minority presence in the SBIC industry, but largely inappropriate if the objective is to identify applicants most likely to operate successfully under SBA parameters as debenture licensees.^{viii}

- d. Commercial banking and local economic development lending were types of careers that were readily accessible to African Americans and other minorities; investment banking and mainstream venture capital investing were rarely available, a fact clearly testified to by the survey data summarized in table ten and discussed above. For the SBA to establish such experience [investment banking and venture capital] as a de facto criterion for qualifying for a SBIC license would have the effect of discouraging minority involvement in the SBIC program.^{ix}
 - e. African American total representation in the SBIC universe consisted of two funds owned by one firm. This is the predictable consequence of requiring work experience largely unavailable to African Americans as a condition for approving applicants for SBIC charters.^x
3. Deposed statements from the SBA's high ranking/decision making civil servant employees bring to light the reality of a distinct and prevalent biased culture against the inclusion of minority and women-owned businesses. Listen further to what four key SBA staffers said despite the concerns of Senator Kerry's requests for "change" as it related to the treatment/review of minority and women-owned applicants...I quote:
- a. "...venture capital should be available to a wider geographical area...I agree that [venture capital] should be more broadly available to minority-owned businesses, to women-owned businesses, and firms located in rural areas and inner-cities."^{xi}
 - b. "There was no special training for analyst who reviewed applications."^{xii}

- c. “It is my belief that making venture capital more broadly available to minorities is not a specific goal of the SBIC program.”^{xiii}
- d. “[I] did not have the opinion that economic development corporations (and organizations such as civil rights organizations, business development organizations, and ethnic membership organizations) are quality sources of deal flow.”^{xiv}
- e. “I did not receive any formal training prior to reviewing the [Diamond] application.”^{xv}
- f. “I did not really consider Diamond’s public policy goal of investing in and lending to minorities, women, inner-city, and LMI areas even though it was stated in the application.”^{xvi}
- g. “I think I felt he (C. Earl Peek) had a sense of entitlement about being in the program.”^{xvii}

I understand that today you are principally concerned with the experiences of entrepreneurs, primarily minority and women-owned businesses that have applied for, pursued, sought, or had obstacles to grow and succeed. The culprit is SBA in not making venture capital available for this group. I have witnessed firsthand the dire need for this kind of capital for minority, women-owned businesses, and businesses located in the inner-city/underserved areas. Past Congressional inquiries accurately outlined findings that the SBA provided significantly less money, less opportunities, and fewer prospects for growth for minority and women-owned businesses as compared to predominantly Caucasian male owned businesses. Sadly, the SBA continues this trend.

SBA even withheld an internal approval showing that Diamond and Women and Minority Partners, LP of New York Qualified and Eligible for seven years (See Judge Alan Kay ruling in May 2008).

Mr. Chairman and Members of the Committee, I have been a direct participant in and witness of testimony made under oath by SBA employees and past political appointees that do not deem investments in and lending to minorities and women a goal of the SBIC program. These officials have testified that they do not deem it appropriate to consider it a viable strategy or good public policy to invest in or lend in low-moderate-income areas. This is in contrast to Congressional testimony by past Administrator Preston, and others, that 25% of the SBA's funds is and should be directed to assist low-moderate-income (LMI) and/or underserved areas. As noted by my testimony citing numerous reliable sources, the SBA has not deployed sufficient capital to minority and women-owned businesses that serve underserved and low-moderate income areas.

I strongly urge the Members of this committee to consider today's testimonies and to take aggressive action to correct the SBA's history of discriminatory practices that pose a grave obstacle to small businesses. I urge this committee to establish and guarantee implementation of inclusive procedures that will enable minority and women-owned businesses to access the necessary capital to achieve the American Dream, not just for them, but for the underserved and low-moderate income areas they serve. Please review Senate Bill 2920 for comprehensive inclusion of management teams and experiences earned by minority persons, accountability for deployment of capital, penalties for failure to comply and related changes that impact capital for minorities.

It is time to change the way America and the SBA conduct business and deploy public funds that have been entrusted for the purpose of making capital available for all Americans.

I thank you kindly, and submit my testimony together with the documents referenced herein.

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- ⁱ **Expert Witness Report: Diamond Ventures, LLC, v. Steven Preston, Administrator U.S. Small Business Administration**, Submitted by Timothy Bates, April 30, 2008 (hereafter referred to as “Expert Report”)
- ⁱⁱ February 16, 2006 letter from the Honorable John F. Kerry to the SBA’s former Administrator, the honorable Hector V. Barreto, pg. 1, paragraph, 1.
- ⁱⁱⁱ February 16, 2006 letter from the Honorable John F. Kerry to the SBA’s former Administrator, the honorable Hector V. Barreto, pg. 1, paragraph, 2.
- ^{iv} February 16, 2006 letter from the Honorable John F. Kerry to the SBA’s former Administrator, the honorable Hector V. Barreto, pg. 1, paragraph, 3.
- ^v February 16, 2006 letter from the Honorable John F. Kerry to the SBA’s former Administrator, the honorable Hector V. Barreto, pg. 1, paragraph, 1
- ^{vi} Dr. Timothy Bates, Expert Report, May 2008, page 8
- ^{vii} Dr. Timothy February 16, 2006 letter from the Honorable John F. Kerry to the SBA’s former Administrator, the honorable Hector V. Barreto, pg. 1, paragraph, 1 Bates, Expert Report, May 2008, page 30
- ^{viii} Dr. Timothy Bates, Expert Report, May 2008, page 8
- ^{ix} Dr. Timothy Bates, Expert Report, May 2008, page 47
- ^x Dr. Timothy Bates, Expert Report, May 2008, page 47
- ^{xi} Diamond Ventures, LLC v. Jovita Carranza, U.S. District Court for the District of Columbia, CA03-1449(GK), sworn deposition of Jeffrey Pierson, Associate Administrator, pg. 46, line 14 and pg. 47, line 4.
- ^{xii} Diamond Ventures, LLC v. Jovita Carranza, U.S. District Court for the District of Columbia, CA03-1449(GK), sworn deposition of Margaret “Terri” Dennin, pg. 20, line 21.
- ^{xiii} Diamond Ventures, LLC v. Jovita Carranza, U.S. District Court for the District of Columbia, CA03-1449(GK), sworn deposition of Stephen Knott, Program Analyst, Day 1, pg. 49, line 22 and pg. 50, line 1.
- ^{xiv} Diamond Ventures, LLC v. Jovita Carranza, U.S. District Court for the District of Columbia, CA03-1449(GK), sworn deposition of Jeffrey Pierson, Associate Administrator, pg. 263, line 14.
- ^{xv} Diamond Ventures, LLC v. Jovita Carranza, U.S. District Court for the District of Columbia, CA03-1449(GK), sworn deposition of Stephen Knott, Program Analyst, Day 2, pg. 33, line 6.
- ^{xvi} Diamond Ventures, LLC v. Jovita Carranza, U.S. District Court for the District of Columbia, CA03-1449(GK), sworn deposition of Stephen Knott, Program Analyst, Day 2, pg. 293, line 13.
- ^{xvii} Diamond Ventures, LLC v. Jovita Carranza, U.S. District Court for the District of Columbia, CA03-1449(GK), sworn deposition of Karen Ellis, Program Analyst, pg. 184, line 14.