

“(v) NONDELEGATION.—Notwithstanding section 508(e), the Administrator may not permit a premier certified lender to approve or disapprove an application for assistance under this subparagraph.

“(vi) TOTAL AMOUNT OF LOANS.—The Administrator may provide not more than a total of \$7,500,000,000 of financing under this subparagraph for each fiscal year.”.

Effective date.
15 USC 696 note.

(b) PROSPECTIVE REPEAL.—Effective 2 years after the date of enactment of this Act, section 502(7) of the Small Business Investment Act of 1958 (15 U.S.C. 696(7)) is amended by striking subparagraph (C).

(c) TECHNICAL CORRECTION.—Section 502(2)(A)(i) of the Small Business Investment Act of 1958 (15 U.S.C. 696(2)(A)(i)) is amended by striking “subparagraph (B) or (C)” and inserting “clause (ii), (iii), (iv), or (v)”.

PART III—OTHER MATTERS

SEC. 1131. SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.

(a) IN GENERAL.—Section 7 of the Small Business Act (15 U.S.C. 636) is amended by striking subsection (l) and inserting the following:

“(l) SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.—

“(1) DEFINITIONS.—In this subsection—

“(A) the term ‘eligible intermediary’—

“(i) means a private, nonprofit entity that—

“(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

“(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

“(ii) includes—

“(I) a private, nonprofit community development corporation;

“(II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and

“(III) an agency of or nonprofit entity established by a Native American Tribal Government; and

“(B) the term ‘Program’ means the small business intermediary lending pilot program established under paragraph (2).

“(2) ESTABLISHMENT.—There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

“(3) PURPOSES.—The purposes of the Program are—

“(A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and

“(B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries

to enable the eligible intermediaries to provide loans to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

“(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

“(A) APPLICATION.—Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

“(i) the type of small business concerns to be assisted;

“(ii) the size and range of loans to be made;

“(iii) the interest rate and terms of loans to be made;

“(iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;

“(v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and

“(vi) the qualifications of the applicant to carry out this subsection.

“(B) LOAN LIMITS.—No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed \$1,000,000 during the participation of the eligible intermediary in the Program.

“(C) LOAN DURATION.—Loans made by the Administrator under this subsection shall be for a term of 20 years.

“(D) APPLICABLE INTEREST RATES.—Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

“(E) FEES; COLLATERAL.—The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

“(F) DELAYED PAYMENTS.—The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

“(G) MAXIMUM PARTICIPANTS AND AMOUNTS.—During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

“(i) to not more than 20 eligible intermediaries; and

“(ii) in a total amount of not more than \$20,000,000.

“(5) LOANS TO SMALL BUSINESS CONCERNS.—

“(A) IN GENERAL.—The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

“(B) MAXIMUM LOAN.—An eligible intermediary may not make a loan under this subsection of more than \$200,000 to any 1 small business concern.

“(C) APPLICABLE INTEREST RATES.—A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

“(D) REVIEW RESTRICTIONS.—The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

“(6) TERMINATION.—The authority of the Administrator to make loans under the Program shall terminate 3 years after the date of enactment of the Small Business Job Creation and Access to Capital Act of 2010.”.

Deadline.
15 USC 636 note.

(b) RULEMAKING AUTHORITY.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue regulations to carry out section 7(l) of the Small Business Act, as amended by subsection (a).

15 USC 636 note.

(c) AVAILABILITY OF FUNDS.—Any amounts provided to the Administrator for the purposes of carrying out section 7(l) of the Small Business Act, as amended by subsection (a), shall remain available until expended.

SEC. 1132. PUBLIC POLICY GOALS.

Section 501(d)(3) of the Small Business Investment Act of 1958 (15 U.S.C. 695(d)(3)) is amended—

- (1) in subparagraph (J), by striking “or” at the end;
- (2) in subparagraph (K), by striking the period at the end and inserting “, or”; and
- (3) by adding at the end the following:

“(L) reduction of rates of unemployment in labor surplus areas, as such areas are determined by the Secretary of Labor.”.

SEC. 1133. FLOOR PLAN PILOT PROGRAM EXTENSION.

(a) IN GENERAL.—Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—

- (1) by redesignating paragraph (32), relating to increased veteran participation, as added by section 208 of the Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110-186; 122 Stat. 631), as paragraph (33); and

(2) by adding at the end the following:

“(34) FLOOR PLAN FINANCING PROGRAM.—

“(A) DEFINITION.—In this paragraph, the term ‘eligible retail good’—

“(i) means a good for which a title may be obtained under State law; and

“(ii) includes an automobile, recreational vehicle, boat, and manufactured home.

“(B) PROGRAM.—The Administrator may guarantee the timely payment of an open-end extension of credit to a small business concern, the proceeds of which may be used for the purchase of eligible retail goods for resale.

PUBLIC LAW 97-255 [H.R. 1526]; September 8, 1982

Federal Managers Financial Integrity Act (FMFIA) of
1982

Be it enacted by the Senate and House of Representatives of the United States of America
in Congress Assembled,

Section 1. This Act may be cited as the "Federal Managers' Financial Integrity Act of 1982".

Sec. 2. Section 113 of the Accounting and Auditing Act of 1950 (31 U.S.C. 66a) is amended
by adding at the end thereof the following new subsection:

"(d)(1)(A) To ensure compliance with the requirements of subsection (a)(3) of this section,
internal accounting and administrative controls of each executive agency shall be established in
accordance with standards prescribed by the Comptroller General, and shall provide reasonable
assurances that --

"(i) obligations and costs are in compliance with applicable law;

"(ii) funds, property, and other assets are safeguarded against waste, loss, unauthorized
use, or misappropriation; and

"(iii) revenues and expenditures applicable to agency operations are properly recorded
and accounted for to permit the preparation of accounts and reliable financial and statistical
reports and to maintain accountability over the assets.

"(B) The standards prescribed by the Comptroller General under this paragraph shall include
standards to ensure the prompt resolution of all audit findings.

"(2) By December 31, 1982, the Director of the Office of Management and Budget, in
consultation with the Comptroller General, shall establish guidelines for the evaluation by agencies
of their systems of internal accounting and administrative control to determine such systems'
compliance with the requirements of paragraph (1) of this subsection. The Director, in consultation
with the Comptroller General, may modify such guidelines from time to time as deemed necessary.

"(3) By December 31, 1983, and by December 31 of each succeeding year, the head of each
executive agency shall, on basis of an evaluation conducted in accordance with guidelines
prescribed under paragraph (2) of this subsection, prepare a statement --

"(A) that the agency's systems of internal accounting and administrative control fully
comply with the requirements of paragraph (1); or

"(B) that the systems do not fully comply with such requirements.

"(4) In the event that the head of an agency prepares a statement described in paragraph (3)(B),
the head of such agency shall include with such statement a report in which any material
weaknesses in the agency's systems of internal accounting and administrative control are identified
and the plans and schedule for correcting any such weakness are described.

"(5) The statements and reports required by this subsection shall be signed by the head of each
executive agency and transmitted to the President and the Congress. Such statements and reports
shall also be made available to the public, except that, in the case of any such statement or report
containing information which is --

"(A) specifically prohibited from disclosure by any provision of law; or

"(B) specifically required by Executive order to be kept secret in the interest of national
defense or the conduct of foreign affairs,

such information shall be deleted prior to the report or statement being made available to the
public.

House of Representatives, and any court, court administrative office, or instrumentality in the judicial or legislative branches of the Government, and government corporations.”;

(B) by adding after subsection (c) the following new subsection:

“(d) A levy pursuant to the Internal Revenue Code of 1986 shall take precedence over other deductions under this section.”.

(i)(1) IN GENERAL.—Section 7701 of title 31, United States Code, is amended by adding at the end the following new subsections:

*“(c)(1) The head of each Federal agency shall require each person doing business with that agency to furnish to that agency such person’s taxpayer identifying number.

“(2) For purposes of this subsection, a person shall be considered to be doing business with a Federal agency if the person is—

“(A) a lender or servicer in a Federal guaranteed or insured loan program administered by the agency;

“(B) an applicant for, or recipient of, a Federal license, permit, right-of-way, grant, or benefit payment administered by the agency or insurance administered by the agency;

“(C) a contractor of the agency;

“(D) assessed a fine, fee, royalty or penalty by the agency;

and
“(E) in a relationship with the agency that may give rise to a receivable due to that agency, such as a partner of a borrower in or a guarantor of a Federal direct or insured loan administered by the agency.

“(3) Each agency shall disclose to a person required to furnish a taxpayer identifying number under this subsection its intent to use such number for purposes of collecting and reporting on any delinquent amounts arising out of such person’s relationship with the Government.

“(4) For purposes of this subsection, a person shall not be treated as doing business with a Federal agency solely by reason of being a debtor under third party claims of the United States. The preceding sentence shall not apply to a debtor owing claims resulting from petroleum pricing violations or owing claims resulting from Federal loan or loan guarantee/insurance programs.

“(d) Notwithstanding section 552a(b) of title 5, United States Code, creditor agencies to which a delinquent claim is owed, and their agents, may match their debtor records with Department of Health and Human Services, and Department of Labor records to obtain names (including names of employees), name controls, names of employers, taxpayer identifying numbers, addresses (including addresses of employers), and dates of birth. The preceding sentence shall apply to the disclosure of taxpayer identifying numbers only if such disclosure is not otherwise prohibited by section 6103 of the Internal Revenue Code of 1986. The Department of Health and Human Services, and the Department of Labor shall release that information to creditor agencies and may charge reasonable fees sufficient to pay the costs associated with that release.”.

(2) INCLUDED FEDERAL LOAN PROGRAM DEFINED.—Subparagraph (C) of section 6103(l)(3) of the Internal Revenue Code of 1986 (relating to disclosure that applicant for Federal loan has tax delinquent account) is amended to read as follows: 26 USC 6103.

Sec. 3. Section 201 of the Budget and Accounting Act, 1921 (31 U.S.C. 11), is amended by adding at the end thereof the following new subsection:

"(k)(1) The President shall include in the supporting detail accompanying each Budget submitted on or after January 1, 1983, a separate statement, with respect to each department and establishment, of the amounts of appropriations requested by the President for the Office of Inspector General, if any, of each such establishment or department.

"(2) At the request of a committee of the Congress, additional information concerning the amount of appropriations originally requested by any office of the Inspector General, shall be submitted to such committee."

Sec. 4. Section 113(b) of the Accounting and Auditing Act of 1950 (31 U.S.C. 66a(b)), is amended by adding at the end thereof the following new sentence: "Each annual statement prepared pursuant to subsection (d) of this section shall include a separate report on whether the agency's accounting system conforms to the principles, standards, and related requirements prescribed by the Comptroller General under section 112 of this Act."

Approved September 8, 1982.

LEGISLATIVE HISTORY - H.R. 1526 (S. 864)

HOUSE REPORT No. 97-38 (Comm. on Government Operations).

CONGRESSIONAL RECORD:

Vol. 127 (1981): May 18, considered and passed House.

Vol. 128 (1982): Aug 4, considered and passed Senate, amended.

Aug. 19, House concurred in Senate amendment.

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I. INTRODUCTION

Management has a fundamental responsibility to develop and maintain effective internal control. The proper stewardship of Federal resources is an essential responsibility of agency managers and staff. Federal employees must ensure that Federal programs operate and Federal resources are used efficiently and effectively to achieve desired objectives. Programs must operate and resources must be used consistent with agency missions, in compliance with laws and regulations, and with minimal potential for waste, fraud, and mismanagement.

Management is responsible for developing and maintaining effective internal control. Effective internal control provides assurance that significant weaknesses in the design or operation of internal control, that could adversely affect the agency's ability to meet its objectives, would be prevented or detected in a timely manner.

Internal Control -- organization, policies, and procedures -- are tools to help program and financial managers achieve results and safeguard the integrity of their programs. This Circular provides guidance on using the range of tools at the disposal of agency managers to achieve desired program results and meet the requirements of the Federal Managers' Financial Integrity Act (FMFIA) of 1982. The FMFIA encompasses accounting and administrative controls. Such controls include program, operational, and administrative areas as well as accounting and financial management.

The importance of internal control is addressed in many statutes and executive documents. The FMFIA establishes overall requirements with regard to internal control. The agency head must establish controls that reasonably ensure that: "(i) obligations and costs are in compliance with applicable law; (ii) funds, property, and other assets are safeguarded against waste, loss, unauthorized use or misappropriation; and (iii) revenues

and expenditures applicable to agency operations are properly recorded and accounted for to permit the preparation of accounts and reliable financial and statistical reports and to maintain accountability over the assets.”¹ In addition, the agency head annually must evaluate and report on the control and financial systems that protect the integrity of Federal programs (Section 2 and Section 4 of FMFIA respectively). The three objectives of internal control are to ensure the effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations. The safeguarding of assets is a subset of all of these objectives.

Instead of considering internal control as an isolated management tool, agencies should integrate their efforts to meet the requirements of the FMFIA with other efforts to improve effectiveness and accountability. Thus, internal control should be an integral part of the entire cycle of planning, budgeting, management, accounting, and auditing. It should support the effectiveness and the integrity of every step of the process and provide continual feedback to management.

Federal managers must carefully consider the appropriate balance between controls and risk in their programs and operations. Too many controls can result in inefficient and ineffective government; agency managers must ensure an appropriate balance between the strength of controls and the relative risk associated with particular programs and operations. The benefits of controls should outweigh the cost. Agencies should consider both qualitative and quantitative factors when analyzing costs against benefits.

A. Agency Implementation. Internal control guarantees neither the success of agency programs, nor the absence of waste, fraud, and mismanagement, but is a means of managing the risk associated with Federal programs and operations. Managers should define the control environment (e.g., programs, operations, or financial reporting) and then perform risk assessments to identify the most significant areas within that environment in which to place or enhance internal control. The risk assessment is a critical step in the process to determine the extent of controls. Once significant areas have been identified, control activities should be implemented. Continuous monitoring and testing should help to identify poorly designed or ineffective controls and should be reported upon periodically. Management is then responsible for redesigning or improving upon those controls. Management is also responsible for communicating the objectives of internal control and ensuring the organization is committed to sustaining an effective internal control environment.

Appropriate internal control should be integrated into each system established by agency management to direct and guide its operations. As stated earlier in this document, internal control applies to program, operational, and administrative areas as well as accounting and financial management.

Generally, identifying and implementing the specific procedures necessary to ensure effective internal control, and determining how to assess the effectiveness of those controls, is left to the discretion of the agency head. While the procedures may vary from

¹ The quoted text is from the Federal Managers' Financial Integrity Act (FMFIA) of 1982.

agency to agency, management should have a clear, organized strategy with well-defined documentation processes that contain an audit trail, verifiable results, and specify document retention periods so that someone not connected with the procedures can understand the assessment process.

To ensure senior management involvement, many agencies have established their own senior management council, often chaired by the agency's lead management official, to address management accountability and related issues within the broader context of agency operations. Relevant issues for such a council include ensuring the agency's commitment to an appropriate system of internal control; actively overseeing the process of assessing internal controls, including non-financial as well as financial reporting objectives; recommending to the agency head which control deficiencies are material to disclose in the annual FMFIA report; and providing input for the level and priority of resource needs to correct these deficiencies. (See also Section IV.C. Role of a Senior Management Council.)

II. STANDARDS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved: effectiveness and efficiency of operations, reliability of financial reporting, and compliance with applicable laws and regulations.²

Internal control, in the broadest sense, includes the plan of organization, methods and procedures adopted by management to meet its goals. Internal control includes processes for planning, organizing, directing, controlling, and reporting on agency operations.

The three objectives of internal control are:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

² Internal control standards and the definition of internal control are based on GAO, Standards for Internal Control in the Federal Government, November 1999, "Green Book".

B. MANAGEMENT OF GUARANTEED LOAN LENDERS AND SERVICERS

REFERENCES

Guidance	Treasury/FMS "Managing Federal Receivables"
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1. Lender Eligibility.

- a. *Participation Criteria.* Federal credit granting agencies shall establish and publish in the Federal Register specific eligibility criteria for lender participation in Federally guaranteed loan programs. These criteria should include:

(1) Requirements that the lender is not currently debarred/suspended from participation in a Government contract or delinquent on a Government debt;

X (2) Qualification requirements for principal officers and staff of the lender;

(3) Fidelity/surety bonding and/or errors and omissions insurance with the Federal Government as a loss payee, where appropriate, for new or non-regulated lenders or lenders with questionable performance under Federal guarantee programs;

(4) Financial and capital requirements for lenders not regulated by a Federal financial institution regulatory agency, including minimum net worth requirements based on business volume.

- b. *Review of Eligibility.* Agencies shall review and document a lender's eligibility for continued participation in a guaranteed loan program at least every two years. Ideally, these reviews should be conducted in conjunction with on-site reviews of lender operations (see B.3) or other required reviews, such as renewal of a lender agreement (see B.2). Lenders not meeting standards for continued participation should be decertified. In addition to the participation criteria above, guarantor agencies should consider lender performance as a critical factor in determining continued eligibility for participation.

- c. *Fees.* When authorized and appropriated for such purposes, agencies should assess non-refundable fees to defray the costs of determining and reviewing lender eligibility.

- d. *Decertification.* Guarantor agencies should establish specific procedures to decertify lenders or take other appropriate action any time there is:

(1) Significant and/or continuing non-conformance with agency standards; and/or

(2) Failure to meet financial and capital requirements or other eligibility criteria.

Agency procedures should define the process and establish timetables by which decertified lenders can apply for reinstatement of eligibility for Federal guaranteed loan programs.

- e. *Loan Servicers.* Lenders transferring and/or assigning the right to service guaranteed loans to a loan servicer should use only servicers meeting applicable standards set by the Federal guarantor agency. Where appropriate, agencies may adopt standards for loan servicers established by a Government Sponsored Enterprise (GSE) or a similar organization (e.g., Government National Mortgage Association for single family mortgages) and/or may authorize lenders to use servicers that have been approved by a GSE or similar organization.

2. Lender Agreements. Agencies should enter into written agreements with lenders that have been determined to be eligible for participation in a guaranteed loan program. These agreements should incorporate general participation requirements, performance standards and other applicable requirements of this Circular. Agencies are encouraged, where not prohibited by authorizing legislation, to set a fixed duration for the agreement to ensure a formal review of the lender eligibility for continued participation in the program.

- a. *General Participation Requirements.*

(1) Requirements for lender eligibility, including participation criteria, eligibility reviews, fees, and decertification (see Section 1, above);

(2) Agency and lender responsibilities for sharing the risk of loan defaults (see Section II.3. a.(1)); and, where feasible

(3) Maximum delinquency, default and claims rates for lenders, taking into account individual program characteristics.

- b. *Performance Standards.* Agencies should include due diligence requirements for originating, servicing, and collecting loans in their lender agreements. This may be accomplished by referencing agency regulations or guidelines. Examples of due diligence standards include collection procedures for past due accounts, delinquent debtor counseling procedures and litigation to enforce loan contracts.

Agencies should ensure, through the claims review process, that lenders have met these standards prior to making a claim payment. Agencies should reduce claim amounts or reject claims for lender non-performance.

- c. *Reporting Requirements.* Federal credit granting agencies should require certain data to monitor the health of their guaranteed loan portfolios, track and evaluate lender performance and satisfy OMB, Treasury, and other reporting requirements which include the <Treasury Report on Receivables (TROR)>. Examples of these data which agencies must maintain include:

(1) *Activity Indicators* -- number and amount of outstanding guaranteed loans at the beginning and end of the reporting period and the agency share of risk; number and amount of guaranteed loans made during the reporting period; and number and amount of guaranteed loans terminated during the period.

(2) *Status Indicators* -- a schedule showing the number and amount of past due loans by "age" of the delinquency, and the number and amount of loans in foreclosure or liquidation (when the lender is responsible for such activities).

- Agencies may have several sources for such data, but some or all of the information may best be obtained from lenders and servicers. Lender agreements should require lenders to report necessary information on a quarterly basis (or other reporting period based on the level of lending and payment activity).

- d. *Loan Servicers.* Lender agreements must specify that loan servicers must meet applicable participation requirements and performance standards. The agreement should also specify that servicers acquiring loans must provide any information necessary for the lender to comply with reporting requirements to the agency. Servicers may not resell the loans except to qualified servicers.