

**Statutory Authorities**  
**Secondary Market Guarantee Program for First Lien Position 504 Loan Pools (3245-0367)**

**I. American Recovery and Reinvestment Act of 2009, Pub. L. 111-5**

Division A, Title V--FINANCIAL SERVICES AND GENERAL GOVERNMENT

Administrative Provisions--Small Business Administration

**Sec. 503. Establishment of SBA Secondary Market Guarantee Authority.**

(a) Purpose.--The purpose of this section is to provide the Administrator with the authority to establish the SBA Secondary Market Guarantee Authority within the SBA to provide a Federal guarantee for pools of first lien 504 loans that are to be sold to third-party investors.

(b) Definitions.--For purposes of this section:

(1) The term "Administrator" means the Administrator of the Small Business Administration.

(2) The term "first lien position 504 loan" means the first mortgage position, non-federally guaranteed loans made by private sector lenders made under title V of the Small Business Investment Act.

(c) Establishment of Authority.--

(1) Organization.--

(A) The Administrator shall establish a Secondary Market Guarantee Authority within the Small Business Administration.

(B) The Administrator shall appoint a Director of the Authority who shall report to the Administrator.

(C) The Administrator is authorized to hire such personnel as are necessary to operate the Authority and may contract such operations of the Authority as necessary to qualified third party companies or individuals.

(D) The Administrator is authorized to contract with private sector fiduciary and custom dial agents as necessary to operate the Authority.

(2) Guarantee process.--

(A) <<NOTE: Regulations.>> The Administrator shall establish, by rule, a process in which private sector entities may apply to the Administration for a Federal guarantee on pools of first lien position 504 loans that are to be sold to third-party investors.

(B) The Administrator is authorized to contract with private sector fiduciary and custom dial agents as necessary to operate the Authority.

(3) Responsibilities.--

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(A) <<NOTE: Regulations.>> The Administrator shall establish, by rule, a process in which private sector entities may apply to the SBA for a Federal guarantee on pools of first lien position 504 loans that are to be sold to third-party investors.

(B) The rule under this section shall provide for a process for the Administrator to consider and make decisions regarding whether to extend a Federal guarantee referred to in clause (i). Such rule shall also provide that:

(i) The seller of the pools purchasing a guarantee under this section retains not less than 5 percent of the dollar amount of the pools to be sold to third-party investors.

(ii) The Administrator shall charge fees, upfront or annual, at a specified percentage of the loan amount that is at such a rate that the cost of the program under the Federal Recognition Reform Act of 1990 (title V of the Congressional Budget and Control Act of 1974; 2 U.S.C. 661) shall be equal to zero.

(iii) The Administrator may guarantee not more than \$3,000,000,000 of pools under this authority.

(C) The Administrator shall establish documents, legal covenants, and other required documentation to protect the interests of the United States.

(D) The Administrator shall establish a process to receive and disburse funds to entities under the authority established in this section.

(d) Limitations.--

(1) The Administrator shall ensure that entities purchasing a guarantee under this section are using such guarantee for the purpose of selling 504 first lien position pools to third-party investors.

(2) If the Administrator finds that any such guarantee was used for a purpose other than that specified in paragraph (1), the Administrator shall--

(A) prohibit the purchaser of the guarantee or its affiliates (within the meaning of the regulations under 13 CFR 121.103) from using the authority of this section in the future; and

(B) take any other actions the Administrator, in consultation with the Attorney General of the United States deems appropriate.

(e) Oversight.--The <<NOTE: Reports. Deadlines.>> Administrator shall submit a report to Congress not later than the third business day of each month setting forth each of the following:

(1) The aggregate amount of guarantees extended under this section during the preceding month.

(2) The aggregate amount of guarantees outstanding.

(3) Defaults and payments on defaults made under this section.

(4) The identity of each purchaser of a guarantee found by the Administrator to have misused guarantees under this section.

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(5) Any other information the Administrator deems necessary to fully inform Congress of undue risk to the United States associated with the issuance of guarantees under this section.

(f) Duration of Program.--The authority of this section shall terminate on the date 2 years after the date of enactment of this section.

(g) Funding.--Such sums as necessary are authorized to be appropriated to carry out the provisions of this section.

(h) Budget Treatment.--Nothing in this section shall be construed to exempt any activity of the Administrator under this section from the Federal Credit Reform Act of 1990 (title V of the Congressional Budget and Impoundment Control Act of 1974; 2 U.S.C. 661 and following).

(i) Emergency Rulemaking Authority.--

The <<NOTE: Deadlines.>> Administrator shall issue regulations under this section within 15 days after the date of enactment of this section.

The notice requirements of section 553(b) of title 5, United States Code shall not apply to the promulgation of such regulations.

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## II. Small Business Jobs Act Of 2010, Pub. L. 111-240

### TITLE I—SMALL BUSINESSES

#### Subtitle A—Small Business Access to Credit.

#### PART I—NEXT STEPS FOR MAIN STREET CREDIT AVAILABILITY

SEC. 1119. SBA SECONDARY MARKET GUARANTEE AUTHORITY. Section 503(f) of division A of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5; 123 Stat. 155) is amended by striking “on the date 2 years after the date of enactment of this section” and inserting “2 years after the date of the first sale of a pool of first lien position 504 loans guaranteed under this section to a third-party investor.”