

appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act²⁹ and subparagraph (f)(2) of Rule 19b-4 thereunder.³⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-BX-2011-008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-BX-2011-008. This file number should be included on the subject line if e-mail is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-BX-2011-008, and should be submitted on or before March 11, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

Cathy H. Ahn,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Docket No. SBA 2011-0003]

Community Advantage Pilot Program

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice and request for comments.

SUMMARY: SBA is introducing a new pilot loan program called "Community Advantage" to provide 7(a) loan guaranties to small businesses in underserved markets, including Veterans and members of the military community. The Community Advantage Pilot Program will allow mission oriented lenders, primarily non-profit financial intermediaries that are focused on economic development in underserved markets, access to 7(a) loan guaranties for loans of \$250,000 or less.

DATES: *Effective Date:* The Community Advantage Pilot Program will be effective on February 15, 2011, and will remain in effect through March 15, 2014. SBA will begin accepting applications from lenders for participation in the Community

Advantage Pilot Program February 15, 2011.

Comment Date: Comments must be received on or before April 19, 2011.

ADDRESSES: You may submit comments, identified by SBA docket number SBA-2011-0003 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Community Advantage Pilot Program Comments—Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Suite 8300, Washington, DC 20416.

- *Hand Delivery/Courier:* Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

SBA will post all comments on <http://www.regulations.gov>. If you wish to submit confidential business information (CBI) as defined in the User Notice at <http://www.regulations.gov>, please submit the information to Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, or send an e-mail to communityadvantage@sba.gov.

Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT:

Grady B. Hedgespeth, Director, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416; (202) 205-7562; grady.hedgespeth@sba.gov.

SUPPLEMENTARY INFORMATION: SBA is implementing a new pilot loan program called Community Advantage (CA) to provide 7(a) loan guaranties to small businesses located in underserved markets and to veterans and other members of the military community. This new pilot program will replace the current Community Express Pilot Loan Program, which has been extended through April 30, 2011. (75 FR 80561, December 22, 2010) No new Community Express Pilot Loan Program loans will be approved after that date.

1. Background

The Community Express Pilot Loan Program was created over 11 years ago and combined the delegated and expedited SBA Express processing flexibility with a requirement that

²⁹ 15 U.S.C. 78s(b)(3)(a)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

³¹ 17 CFR 200.30-3(a)(12).

Community Express borrowers be provided with management and technical assistance (M&TA). The M&TA was intended to mitigate risks and to provide support for offering the higher 7(a) guaranty levels as opposed to the 50% guaranty on SBA Express products. Because Community Express was a pilot program it was statutorily limited to no more than 10% of the number of 7(a) guaranteed loans in any given fiscal year.

The Community Express product has resulted in loans to new businesses, minority-owned businesses and other underserved sectors; however, it has consistently ranked as SBA's highest loss product, even when controlling for loan size, and it has never had widespread acceptance by SBA lenders or good geographical dispersion. Throughout its history, Community Express has had significantly higher default rates (almost 40% of loans defaulted in certain cohort years) compared with other similarly sized 7(a) loans, which also resulted in higher net losses because most Community Express loans are unsecured. In addition, the difficulty of coordinating and ensuring efficient access to quality management and technical assistance to borrowers resulted in large lenders abandoning the product a few years after its creation. Many commercial lenders may not have been willing or able to meet SBA's technical assistance delivery and reporting requirements because the provision and reporting of management and technical assistance is not normally part of their lending model. Eventually, less than 5% of SBA's active lenders were using the product and most of the activity was concentrated in a handful of lenders (three lenders comprised approximately 85% of the Community Express loan volume in recent years, one of which has been taken over by the FDIC and is no longer in operation).

For the reasons discussed above, SBA is replacing Community Express with the new Community Advantage Pilot Program designed to reach underserved markets more efficiently and effectively and at a lower cost to the taxpayer.

2. Comments

Although the new Community Advantage Pilot Program will be effective February 15, 2011, comments are solicited from interested members of the public on all aspects of the new pilot program. These comments must be submitted on or before the deadline for comments listed in the **DATES** section. The SBA will consider these comments and the need for making any revisions as a result of these comments.

3. Community Advantage Pilot Program

Overview

The Community Advantage Pilot Program (CA Pilot Program) will allow mission oriented lenders, primarily non-profit financial intermediaries that are focused on economic development in underserved markets, access to 7(a) loan guaranties for loans of \$250,000 or less. For purposes of the CA Pilot Program, the underserved markets will include: (1) Low-to-Moderate Income (LMI) communities (while not a specific requirement, CA Lenders are encouraged to serve low and very-low income communities); (2) Empowerment Zones and Enterprise Communities; (3) HUBZones; (4) New businesses, *e.g.*, firms in business for no more than two years; (5) Businesses eligible for Patriot Express, including Veteran-owned businesses; and (6) Firms where more than 50% of their full time workforce is low-income or resides in LMI census tracts.

The CA Pilot Program will be effective February 15, 2011 and will continue through March 15, 2014.

Key features of the new CA Pilot Program are set forth below. More detailed guidance on the CA Pilot will be provided in a participant guide ("Community Advantage Participant Guide") that will be available on SBA's Web site at <http://www.sba.gov>.

Eligible Lenders

The long experience of Community Express indicates that the participating lenders have not been able to lend successfully in these target markets and maintain acceptable losses. SBA believes that an alternate distribution channel, of community-based, mission lenders, will mitigate the risks associated with lending in these markets, reduce losses, deploy more capital and enhance access to capital for a number of underserved groups. In this pilot, SBA will leverage three historically successful programs of mission-based lending. During the pilot, Community Advantage will only be open to: (1) Community Development Financial Institutions (CDFIs) certified by the U.S. Treasury, but that do not have a Federal financial regulator; (2) SBA Certified Development Companies (CDCs); and (3) SBA Microlenders.

Any lender who is already participating in SBA's 7(a) program, as evidenced by an executed Loan Guaranty Agreement (SBA Form 750), is not eligible to participate in the CA Pilot Program, but should continue to use the 7(a) loan program in that lender's current capacity. Other lenders that are

not eligible for the CA Pilot Program but are eligible for the 7(a) loan program are encouraged to apply to participate in the 7(a) loan program by contacting their local SBA Field Office. The local SBA Field Office may be found at <http://www.sba.gov/local>.

Process To Become a CA Lender

Eligible organizations will apply to SBA for approval to participate in the CA Pilot Program. The application will be available on SBA's Web site at: <http://archive.sba.gov/tools/Forms/SBAPartnerforms/index.html>. A lender's application to participate in the CA Pilot Program also should indicate whether or not the lender wishes to apply to sell CA loans in SBA's secondary market.

The application will be evaluated and a decision made for participation in the CA Pilot Program. As part of this evaluation, a determination as to whether the lender may be granted "delegated authority" for the CA Pilot Program and whether the lender may participate in the secondary market, if applicable, also will be made. If an applicant is approved to participate, it will be designated a Community Advantage Lending Company (CA Lender). Also, if approved to participate in the CA Pilot Program, the lender will not be able to make 7(a) loans other than through the pilot.

Each CA Lender will be identified as either a Small Business Lending Company (SBLC) or a Non-Federally Regulated Lender (NFRL), depending on whether the lender is subject to regulation by a State. Accordingly, all CA Lenders will be SBA Supervised Lenders, as that term is defined in 13 CFR 120.10, and will be subject to all regulations applicable to such lenders unless specifically waived or modified in the regulatory waiver section of this Notice.

Approval to participate in the CA Pilot Program will be for the three year period of the pilot. If the CA Pilot Program is not extended, each CA Lender will be required to continue to service and liquidate its CA loans in accordance with the terms of the pilot, but will not be able to make any new CA loans. If the CA Pilot Program is extended or made permanent, each CA Lender's authority to participate will be renewed based on the CA Lender's compliance with the program requirements, including the requirement to make 60% of their loans to small businesses in the CA underserved markets.

Reserve Requirement

CA Lenders are required to create a Loan Loss Reserve Account (LLRA) to cover potential losses arising from defaulted loans. The reserve fund is to cover both losses from the unguaranteed portion of defaulted loans as well as possible repairs and denials associated with SBA's guaranty on the defaulted loan. The LLRA must be maintained separate from other reserve accounts the CA Lender may maintain and it must be deposited in a Federally insured demand, savings or certificate of deposit account in an amount, to the extent practicable, not in excess of the maximum insured amount. The LLRA cannot be commingled with any other loan loss reserve fund of the CA Lender, its parent or related entities. The LLRA must equal 15 percent of the outstanding amount of the unguaranteed portion of a CA Lender's CA loan portfolio including loans sold in the secondary market. The CA Lender must reconcile the LLRA and, if necessary, add funds to the LLRA on a monthly basis to ensure the appropriate amount is maintained. The CA Lender's audited financial statements must include an assessment of the lender's compliance with loan loss reserve account requirements for the CA Pilot Program. Failure to maintain the loan loss reserve account as required may result in removal from the CA Loan Program and/or the imposition of additional controls or reserve amounts. SBA in its discretion may require additional amounts to be included in the LLRA based on the risk characteristics and performance of the CA Lender. SBA microloan intermediaries may not use their SBA intermediary loan to fund the reserve for CA loans (nor may they use it to fund CA loans).

In connection with the reserve requirement, SBA particularly would like to solicit comments regarding any implications this, or other pilot requirements, might have on State-chartered pilot participants in regards to Federalism, as expressed in Executive Order 13132, Federalism. The Executive Order requires SBA to have a process to ensure meaningful and timely input by State and local officials in the development of policies that have substantial direct effects on the States, the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Since the pilot reserve requirement is for participants agreeing to be in the pilot, SBA believes that it can work in concert with any existing State loan loss reserve

requirements. We are also interested in comments discussing this and any other issues arising from this pilot that might have implications for State-chartered institutions.

CA Loans

The loan terms and conditions of CA loans are the same as standard 7(a) loans with the following exceptions: (1) The maximum loan amount is \$250,000; (2) the maximum allowable interest rate is prime + 4%; and (3) revolving loans are not allowed in the CA Pilot. While management and technical assistance (M&TA) is not required for each CA loan, it is encouraged and, if any has been provided prior to the application for loan guaranty, information concerning the M&TA will be identified on the application. Although not every CA loan must be made to a small business in the underserved markets identified above, CA Lenders will be required to demonstrate annually that 60% of their CA loans have been made to such small businesses. SBA Microlenders may not use their SBA intermediary loan to fund either the CA loan or the required loan loss reserve account for CA loans.

All CA borrowers must meet the eligibility requirements of standard 7(a) loans, as set forth in 13 CFR part 120 and Standard Operating Procedure (SOP) 50 10 5(C), Subpart B, Chapter 2. CA Lenders are to follow the credit underwriting procedures for the Small/Rural Lender Advantage (S/RLA) loan program as set forth in SOP 50 10 5(C), Subpart B, Chapter 4. Additionally, CA Lenders are to follow the collateral and environmental requirements applicable to standard 7(a) loans, which also are set forth in SOP 50 10 5(C), Subpart B, Chapter 4. (The SOP 50 10 5(C) can be found on SBA's Web site at: <http://archive.sba.gov/tools/resourcelibrary/sops/index.html>.) SBA Microlenders may not use their SBA intermediary loan to fund CA loans. CA loans may not be used to refinance loans made by or guaranteed by the Department of Agriculture or loans made by SBA microlenders using their SBA intermediary loan.

Allowable Fees

The SBA guaranty fee and the lender's annual service fee set forth in 13 CFR 120.220 apply to loans approved under the CA Pilot Program and CA Lenders may charge the borrower the same fees allowed under SBA's standard 7(a) loan program as set forth in 13 CFR 120.221 and 120.222.

Secondary Market and Participating Lender Financings or Other Conveyances

Qualified CA Lenders will be allowed to sell SBA loan guaranties made under the CA Pilot Program on the secondary market provided they comply with Agency regulations at 13 CFR part 120, subpart F—Secondary Market.

SBA loan guaranties approved under the CA Pilot Program, however, may not be included in any participating lender financings or other conveyances, including securitizations, participations and pledges.

Application Forms and Authorization

CA Lenders will utilize the application forms required for the S/RLA process, as set forth in SOP 50 10 5(C), Subpart B, Chapter 6. More specific guidance on the application forms, including the addendum for CA loans to identify any management and technical assistance the applicant may have received, will be provided in the Community Advantage Participant Guide, which will be available on SBA's Web site.

In addition, the CA Lender will be required to execute an SBA Authorization ("Authorization") for each CA loan. The Authorization is SBA's written agreement between the SBA and the CA Lender providing the terms and conditions under which SBA will guarantee a business loan. For further guidance on the Authorization, see SOP 50 10 5(C), Subpart B, Chapter 5.

CA Lenders are to follow the loan closing and disbursement requirements set forth in SOP 50 10 5(C), Subpart B, Chapter 7.

CA Lenders must follow the servicing and liquidation requirements set forth in 13 CFR 120.535 and 120.536 and SOPs 50 50 and 50 51. (SOPs 50 50 and 50 51 can be found at <http://archive.sba.gov/tools/resourcelibrary/sops/index.html>.)

Guaranty Purchase

Under the CA Pilot Program, loans will be subject to SBA's requirements regarding purchase of its guaranty as set forth in 13 CFR 120.520 through 120.524 and Chapters 22 & 23 of SOP 50 51 3.

Reporting Requirements

CA Lenders will be required to submit annual reports demonstrating compliance with their business plan and showing that 60% of CA loans have been made to small businesses in the CA underserved markets identified above.

Additionally, CA Lenders will be required to submit quarterly reports,

including balance sheet, LLRA levels and income statements.

CA Lenders will be required to report on the status of their CA loans on SBA Form 1502 in accordance with SOP 50 10 5(C), Subpart B, Chapter 8. (SBA Form 1502 can be found at http://www.colsonservices.com/main/f_n_r_main.shtml.)

In addition, CA Lenders will be required to comply with the reporting requirements in 13 CFR 120.464.

Lender Oversight

CA Lender oversight procedures shall follow the requirements set forth in 13 CFR Part 120—Subpart I and SOPs 50 53 (Lender Supervision and Enforcement) and 51 00 (On-Site Lender Reviews and Examinations). (The SOPs can be found at: <http://archive.sba.gov/tools/resourceLibrary/sops/index.html>.) CA Lenders will be monitored both for performance and other risk characteristics as well as for compliance with the requirements of the CA Pilot Program. The CA Lender must maintain compliance with its business plan and the requirement that 60% of the lender's CA loans have been made to small businesses in the underserved markets, along with other program requirements.

Office of Credit Risk Management (OCRM) off-site monitoring will be conducted using the Loan and Lender Monitoring System (L/LMS). L/LMS details historical, current and projected performance data for each individual lender. As noted above, CA Lenders will be required to submit both Quarterly Reports and Annual Reports. Lender review/examination cycles will vary based upon the underlying risk their SBA portfolio poses. Lender reviews/examinations will follow the requirements set forth in 13 CFR 120.1025 through 120.1060 and SOP 51 00.

OCRM will conduct desk reviews, targeted reviews, on-site reviews, expanded on-site reviews and/or examinations based on the lender's level of activity, performance metrics, risk rating and other risk characteristics. All participating lenders will receive an examination or a review after the first year of operation. CA lenders will pay the costs of such reviews and/or examinations and, if assessed by SBA, other lender oversight activities, as set forth in 13 CFR 120.1070.

CA Lenders also will be subject to 13 CFR 120.1400 through 120.1600 and the provisions of SOP 50 53 concerning supervision and enforcement.

Regulatory Waivers

Pursuant to the authority provided to SBA under 13 CFR 120.3 to suspend,

modify or waive certain regulations in establishing and testing pilot loan initiatives for a limited period of time, SBA will modify or waive as appropriate the following regulations, which otherwise apply to 7(a) loans, for the CA Pilot Program only: (1) 13 CFR 120.10, which defines various terms applicable to the 7(a) loan program, including the term "Small Business Lending Company" and which states that SBA has imposed a moratorium on licensing new SBLCs since January 1982, is being waived only to allow organizations that meet the definition of an SBLC but that do not currently have an SBLC license to participate in the CA Pilot Program; (2) 13 CFR 120.151, which states the statutory limit for total loans to a borrower and the maximum loan amount for a 7(a) loan, is being modified because the maximum loan amount under the CA Pilot Program is \$250,000; (3) 13 CFR 120.213, 120.214 and 120.215, which set the maximum interest rates lenders may charge on standard 7(a) loans, are being waived as the maximum allowable interest rate for CA loans will be prime + 4%; (4) 13 CFR 120.420 through 120.435, which govern participant lender financings and other conveyances, including securitizations, participations and pledges, are being waived as CA Lenders will not be allowed to include CA loans in participant lender financings or other conveyances, including securitizations, participations and pledges; (5) 13 CFR 120.452, which describes the requirements for PLP loan processing, is being modified because CA Lenders with delegated authority will be required to comply with these requirements even though they will not be PLP lenders; (6) 13 CFR 120.462, which describes the additional requirements on capital maintenance SBA requires for SBA Supervised Lenders, is being waived as CA Lenders will not be subject to these requirements because CA Lenders will be required to maintain a separate Loan Loss Reserve Account for their CA loans; (7) 13 CFR 120.463(a), which describes the regulatory accounting requirements for SBA Supervised Lenders is being modified as CA Lenders will not be required to keep their books and records on an accrual basis; (8) 13 CFR 120.463(e)(1), which requires SBA Supervised Lenders to maintain loan loss allowances, is being waived because CA Lenders will be required to maintain a separate Loan Loss Reserve Account as described previously in this notice to cover losses on their CA loan portfolio; (9) 13 CFR 120.470(a), which states that an SBLC may only make

loans under section 7(a) of the Small Business Act or loans to Intermediaries under the Microloan program, is being waived because a CA Lender may only make loans under the CA Pilot Program; (10) 13 CFR 120.471(a) and (b), which describe the minimum capital requirements for SBLCs and the composition of the capital, are being waived as CA Lenders will not be subject to these requirements because CA Lenders will be required to maintain a separate Loan Loss Reserve Account for their CA loans and because CA Lenders are generally non-profit organizations with less capitalization and SBA will evaluate their capital base as part of the CA Lender approval process; and (11) 13 CFR 120.852(a), which prohibits a CDC from investing in or being an affiliate of a lender participating in the 7(a) loan program, is being waived in order to allow CDCs or their affiliates to participate in the CA Pilot Program.

SBA is particularly interested in comments discussing the regulatory accounting requirements for CA Lenders.

All provisions of the Small Business Act applicable to the 7(a) loan program apply to loans made under this pilot. Unless waived or modified by this Notice, all regulations applicable to the 7(a) loan program apply to loans made under this pilot. All standard operating procedures applicable to the 7(a) loan program that are not superseded by any provision of this Notice or the Community Advantage Participant Guide apply to loans made under this pilot.

CA Lenders must use prudent lending practices in the making, servicing and liquidating of CA loans and must comply with all SBA Loan Program Requirements.

SBA has provided more detailed guidance in the form of a participant guide which is available on SBA's Web site, <http://www.sba.gov>. SBA may also provide additional guidance, if needed, through SBA notices, which will also be published on SBA's Web site, <http://www.sba.gov>.

Questions on the CA Pilot Program may be directed to the Lender Relations Specialist in the local SBA district office. The local SBA district office may be found at <http://www.sba.gov/local>.

Authority: 15 U.S.C. 636(a)(25) and 13 CFR 120.3.

Karen G. Mills,
Administrator.

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