PROGRAMMATIC ENVIRONMENTAL ASSESSMENT OF CUMULATIVE EFFECTS OF THE 7(A) AND 504 SMALL BUSINESS LOAN ASSISTANCE PROGRAMS

UNITED STATES SMALL BUSINESS ADMINISTRATION

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Table of Contents

SECTION 1 INTRODUCTION

The Small Business Administration ("SBA" or "Agency") has prepared this Programmatic Environmental Assessment ("PEA") of its small business loan assistance programs in anticipation of revising its procedures under the National Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321 et. seq., and that Act's implementing regulations, 40 C.F.R. Part 1500, promulgated by the Council on Environmental Quality ("CEQ").

Small businesses make up a major sector of the American economy and play an essential role in maintaining the Nation's system of private enterprise. The Small Business Act, which created the SBA, provides as follows:

> The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, … and to maintain and strengthen the overall economy of the Nation.

15 U.S.C. § 631, et seq.

America's 22.9 million small businesses employ more than 50 percent of the private work force and generate more than 50 percent of the nation's non-farm private gross domestic product.[1] Small businesses generate 60 to 80 percent of net new jobs annually,[2] and small businesses create opportunities for women, minorities, veterans and the handicapped to enter the economic mainstream. Further, small businesses play an important role in technological innovation, helping the U.S. to achieve a high standard of living, and providing a diversity of products and services.

One of the many ways that Congress has empowered SBA to fulfill the Agency's statutory mission to "aid, counsel and assist small businesses," 15 U.S.C. § 631, is the SBA small

[1] SBA Office of Advocacy, Small Business by the Numbers (May 2003).

[2] SBA Office of Advocacy, Small Business by the Numbers (May 2003).

business loan assistance programs -- the 7(a) Guaranteed Loan Program and the 504 Guaranteed Debenture Program. (These programs are described in Section 2.) Through these programs, SBA assists small businesses, including many minority and women-owned businesses, as well as those owned by veterans and those with disabilities, by encouraging lenders to provide loans to small businesses that would not otherwise qualify for financial assistance.

Several features of SBA's loan assistance programs bear emphasis in connection with this environmental assessment:

1) In more than 60 percent of loans stemming from the Agency's 7(a) and 504 small business loan assistance programs, the lender approves the loan and funds it without SBA's prior review and approval. In fact, based upon current trends to streamline these programs most of SBA's business loan guaranties likely will be made in this way in the near future.

2) It is of paramount importance that loan approval be accomplished as quickly as possible given the needs of the small businesses applying for the loans and the timeframes for loan approval sought by our participating lenders. 3) In the vast majority of cases the loan applicant comes to the lender with an existing business that is in need of specific funding, or with a definite business plan, both as to the business location and the use of proceeds. SBA plays no role in determining either. In this regard, SBA is asked for its guaranty at the end of the process, after the small business owner has determined the purpose and amount of the financing.

4) It is the lender that applies for the guaranty, not the small business, and SBA generally has little or no contact with the small business during the loan approval process.

5) An SBA-guaranteed loan, though quite significant to a small business borrower, when viewed as a Federal expenditure, is relatively small. As set forth in Section 2 below, approximately three-quarters of all guaranteed loans provided by SBA in Fiscal Year 2002 pertained to loans of less than $300,000. In fact, the average size of an SBA-guaranteed loan in FY 2002 was $237,907.

6) In addition, approximately 75 percent of all 7(a) loans, and 70 percent of all 504 loans, are made to borrowers involved in wholesale or retail businesses, or the service industry.

7) Further, less than 13 percent of 7(a) or 504 borrowers are located in rural areas, and the vast majority of SBA loans do not finance new construction.

Accordingly, the nature of SBA's small business loan assistance programs, in which SBA's role is secondary to that of the lenders, expedited loan approval is required, guaranteed loans of relatively low dollar value are involved, and existing site locations or ones that have already been planned, makes a loan-by-loan assessment under NEPA impractical and unnecessary. In Section 3 below, SBA has undertaken a programmatic environmental assessment to determine the extent of any environmental impact of its programs. A primary focus of this assessment was to determine any possible impact SBA small business loan assistance programs may have on urban sprawl, since that question has been raised by certain environmental groups. And, as noted below, SBA has determined that the Agency's small business loan assistance programs do not promote urban sprawl. Such a conclusion is not surprising in light of the fact that small business follows economic development because of the need for customers or clients. But even if this were not the case, the Agency's small business loan assistance programs prohibit the use of loan proceeds for speculative real estate ventures or for real estate development. See 13 C.F.R. § 120.130.

In the absence of any other known controversy regarding the impact of the business loan programs other than an alleged contribution to urban sprawl, Section 3 also undertakes a generalized review of the impacts of the small business loan assistance programs upon other components of the environment. As discussed therein, SBA has determined that the cumulative effects of these programs upon the environment are very limited.

SECTION 2 OVERVIEW OF SBA PROGRAMS

2.1 THE 7(A) GUARANTEED LOAN PROGRAM

Under the 7(a) Guaranteed Loan Program ("7(a) Program"), SBA guarantees up to 85 percent of loan value (depending upon loan size) to encourage commercial lenders to make loans to eligible and creditworthy small businesses that cannot obtain financing on reasonable terms through normal lending channels. SBA does not use any of its own funds unless there is a default by the borrower in paying the loan. If a default occurs, SBA pays its guaranty obligation to the lender. Lenders then undertake the liquidation of collateral given by the borrower to secure the loan, and appropriate debt collection actions against the borrower, to recover any loss on the loan.

Loans are available for many business purposes, such as working capital, inventory, equipment, the acquisition of land, renovation, or construction. Restrictions on the use of loan proceeds, and the types of borrowers on 7(a) guaranteed loans, are discussed below in Section 2.4. Under the Small Business Act, SBA's guaranty cannot exceed 75% of the loan amount for loans over $150,000, and 85% of loans for $150,000 or less.

In approving a guaranty, SBA, and 7(a) lenders acting with delegated authority, rely on the cash flow generated by the business to repay the loan. Available collateral and guaranties of the business principles are also pledged. Repayment must occur within ten years of loans extended for working capital, or within 25 years for loans involving fixed assets or real estate.

The following information relating to SBA's 7(a) Program is from SBA's Performance and Accountability Report for Fiscal Year ("FY") 2002 (October 1, 2001 to September 30, 2002):

7(a) Loan Program	**FY 1998**	**FY 1999**	**FY 2000**	**FY 2001**	**FY 2002**
Number of 7(a) loans approved	42,268	43,636	43,748	42,958	51,666
Dollar volume of 7(a) loans (net)	$9.0 billion	$9.5 billion	$9.7 billion	$9.1 billion	$11.1 billion
Loans to start-ups	14,292 (34%)	13,969 (32%)	13,552 (31%)	12,396 (28%)	13,427 (26%)
Loans to 51% or more minority-owned firms	10,171	11,215	11,234	10,900	13,474

7(a) Loan Program	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Loans to 51% or more women-owned firms	10,271	9,471	9,216	9,012	10,360
Loans to 51% or more veteran-owned firms	5,492	4,993	4,810	4,690	5,438
Number of jobs created and retained	300,000	313,332	324,964	305,509	370,000
Number of 7(a) loans below $150,000	26,001	26,464	26,227	27,107	33,185

The numbers for FY 2002 include 4400 guaranteed loans worth $1.7 billion made to victims of the September 11th terrorist attacks under the Supplemental Terrorist Activity Relief program.

In FY 2002, there were 11,847 guaranteed loans made under the 7(a) Program that exceeded $300,000 (22.93 percent of all 7(a) guaranteed loans).[3]

The 7(a) Program has a number of delivery methods which account for 85.52 percent of all 7(a) guaranteed loans. The 7(a) delivery methods include:

Preferred Lender (PL) Program. Under this program, pursuant to the Small Business Act, SBA delegates responsibility to experienced and qualified lenders (generally larger lending institutions) to issue an SBA guaranty on a loan without prior approval by SBA. 15 U.S.C. § 636(a)(2)(C). In FY 2002, PL Program lenders made 15,452 guaranteed loans, approximately 29.9 percent of all 7(a) guaranteed loans. The total dollar value of PL Program guaranteed loans made in FY 2002 was $6,771,159, with an average of $438,206 per loan. Of the total 11,847 guaranteed loans made in FY 2002 that exceeded $300,000, a total of 7,567 were made under the PL Program.

Certified Lender Program (CLP). Under this program, SBA delegates greater authority to qualified lenders to process 7(a) guaranteed loans with limited review by the Agency at the time of loan origination. In FY 2002, CLP lenders made 2,130 guaranteed loans, approximately 4.1 percent of all 7(a) guaranteed loans. The total dollar value of CLP guaranteed loans made in FY 2002 was $970,500,164, with an average of approximately $455,634 per guaranty.

SBA*Express* Program. This program provides lenders with delegated authority to make guaranteed loans without prior SBA approval, using a lender's own forms, for loans up to $250,000. Lenders, however, can only obtain a guaranty for up to 50% of loan value. In FY 2002, there were 17,495 SBA*Express* guaranteed loans, approximately 33.9 percent

[3] This PEA employs $300,000 as a meaningful point of discussion, consistent with SBA's NEPA SOP, 90-57, which categorically excludes loans that are less than $300,000.

of all 7(a) guaranteed loans. The total dollar value of SBA*Express* guaranteed loans made in FY 2002 was approximately $840,974,526, with an average of $48,069 per guaranty.

Low-Doc Program. Low-Doc guaranteed loans permit a lender to submit limited application materials to SBA to obtain a guaranty on loans of up to $150,000, and to obtain a response from SBA within 36 hours. In FY 2002, there were 9,107 Low-Doc guaranteed loans, approximately 17.63 percent of the 7(a) program. The total dollar value of Low-Doc guaranteed loans made in FY 2002 was $791,887,461, with an average of $86,954 per guaranty.

In addition, the 7(a) guaranteed-loan program includes several specialized lending programs.[4] These include:

CAPLine Loan Program. CAPLine guaranteed loans provide financial assistance to companies with short-term or cyclical working capital needs. Five types of CAPLine Loans are available:

(1) Seasonal Line: Finances anticipated needs during seasonal upswings in the business cycle. The Seasonal Line can be revolving or nonrevolving.

(2) Contract Line: Finances the direct labor and material costs associated with performing assignable contract(s). One Contract Line can finance more than one contract.

(3) Builders Line: Finances the direct labor and material costs for small general contractors and builders that construct or renovate commercial or residential buildings. The building project serves as the collateral. Builders Line guaranteed loans can be revolving or nonrevolving.

(4) Standard Asset-Based Line: Provides financing for cyclical, growth and recurring short- term needs by advancing funds against existing inventory and accounts receivable. Businesses continually draw and repay as their cash cycle dictates. This line of credit is generally utilized by businesses that provide credit to other businesses. These guaranteed loans require periodic servicing and monitoring of collateral, for which additional fees are usually charged by the participating bank.

(5) Small Asset-Based Line: Provides up to $200,000 under an asset-based revolving line of credit similar to the Standard Asset-Based Line, except that some of the stricter servicing requirements are waived (provided that the business can consistently show repayment ability from cash flow for the full amount).

In FY 2002, SBA provided assistance in connection with 451 CAPLine guaranteed loans (a total of the five categories above), approximately 0.87 percent of guaranteed loans

[4] Although SBA has statutory authority for a Pollution Control Guaranteed Loan program, designed to provide financing to eligible small businesses for the planning, design, or installation of a pollution control facility, this program is has been inactive for many years.

made under the 7(a) Program. Of these, 16 guaranteed loans were Builders Caplines, approximately 0.03 percent of guaranteed loans made under the 7(a) Program.

Export Working Capital Program (EWCP). Under this program, SBA guarantees short-term working capital loans made by participating lenders to exporters. An export loan can be for a single transaction or for multiple transactions. In FY 2002, 227 EWCP guaranteed loans were made, approximately 0.44 percent of guaranteed loans made under the 7(a) Program. The total dollar value of EWCP guaranteed loans made in FY 2002 was $102,262,032.00, with an average of $450,493.53 per loan.

International Trade Loans. The SBA can guaranty up to $1,250,000 for a combination of fixed-asset (facilities and equipment) financing and Export Working Capital to firms that are preparing to engage in, or are already engaged in, international trade, or have been adversely affected by competition from imports. In FY 2002, 1018 International Trade guaranteed loans were made, approximately 1.97 percent of guaranteed loans made under the 7(a) Program. The total dollar value of International Trade guaranteed loans made in FY 2002 was $501,926,763, with an average of $49,305.18 per loan.

Defense Loan and Technical Assistance (DELTA) Program. The DELTA program provides financial and technical assistance to defense-dependent small businesses which have been adversely affected by defense reductions. The goal of the program is to assist these businesses to diversify into the commercial market while remaining part of the defense industrial base. In FY 2002, 262 DELTA guaranteed loans were made, approximately 0.51 percent of guaranteed loans made under the 7(a) Program. The total dollar value of DELTA guaranteed loans made in FY 2002 was $153,398,260, with an average of $58,549 per guaranty.

Community Adjustment and Investment Program (CAIP). The Community Adjustment and Investment Program was created to help communities that suffered job losses due to changing trade patterns with Mexico and Canada following the North American Free Trade Agreement (NAFTA). The CAIP increases the availability and flow of credit, and encourages business development and expansion, in impacted areas. In FY 2002, 331 CAIP guaranteed loans were made, approximately 0.64% percent of guaranteed loans made under the 7(a) Program. The total dollar value of CAIP guaranteed loans made in FY 2002 was $99,341,879, with an average of $300,127 per guaranty.

Qualified Employment Trust (QET) Loans. This program provides financial assistance to Employee Stock Ownership Plans (ESOPs). The employee trust must be part of a plan sponsored by the employer company and qualified under regulations set by either the Internal Revenue Service Code (as an ESOP) or the Department of Labor (under the Employee Retirement Income Security Act). In FY 2002, three Qualified Employment Trust guaranteed loans were made, approximately 0.006 percent of guaranteed loans made under the 7(a) Program. The total dollar value of QET guaranteed loans made in FY 2002 was $1,849,800, with an average of $616,600 per guaranty.

2.2 THE 504 GUARANTEED DEBENTURE PROGRAM

Under the 504 Guaranteed Debenture Program ("504 Program"), SBA assists small businesses seeking long-term, fixed-rate financing to acquire or improve capital assets such as real estate, large machinery or equipment. SBA implements the program through Certified Development Companies ("CDCs"), private, non-profit corporations which are licensed to foster economic development in their community or region. The 268 CDCs participating in the 504 Program work with the SBA and private-sector lenders to provide financing to small businesses. Typically, a 504 project is funded by three sources: (1) a loan, secured with a senior lien, from a private-sector lender for 50 percent of the project cost; (2) an equity contribution from the borrower of at least 10 percent of the project cost; and (3) a loan covering up to 40 percent of the total cost, which is funded from proceeds from the sale to investors of a debenture issued by a CDC, payment of which is guaranteed by the SBA. (Although SBA does not actually guaranty the payment of a 504 loan, but rather the debenture which funds the loan, these loans are referred to below as guaranteed loans for sake of convenience.) SBA does not use any of its own funds unless there is a default by the borrower in paying the debenture-funded loan, in which case the Agency pays the outstanding balance owed on the debenture to the investors. After a default, liquidation of collateral given by the borrower to secure the loan, and appropriate debt collection actions against the borrower, are undertaken to recover any loss on the loan.

The 504 Program differs from the 7(a) Program due to its focus on job retention and creation. A CDC's loan portfolio must reflect an average of at least one new job opportunity for every $35,000 of SBA-guaranteed debenture proceeds. 13 C.F.R. 120.829. 504 loans must meet one or more of the following community development and public policy goals:

(a) Community Development goals:

(1) Improving, diversifying or stabilizing the economy of the locality;

(2) Stimulating other business development;

(3) Bringing new income into the community;

(4) Assisting manufacturing firms (North American Industry Classification System (NAICS), Sectors 31 " 33); or

(5) Assisting businesses in Labor Surplus Areas as defined by the Department of Labor.

(b) Public Policy goals:

(1) Revitalizing a business district of a community with a written revitalization or redevelopment plan;

(2) Expansion of exports;

(3) Expansion of small businesses owned and controlled by women as defined in section 29(a)(3) of the Act, 15 U.S.C. 656(a)(3);

(4) Expansion of small businesses owned and controlled by veterans (especially service-disabled veterans) as defined in section 3(q) of the Act, 15 U.S.C. 632(q);

(5) Expansion of minority enterprise development (see § 124.103(b) of this chapter for minority groups who qualify for this description);

(6) Aiding rural development;

(7) Increasing productivity and competitiveness (retooling, robotics, modernization, competition with imports);

(8) Modernizing or upgrading facilities to meet health, safety, and environmental requirements; or

(9) Assisting businesses in or moving to areas affected by Federal budget reductions, including base closings, either because of the loss of Federal contracts or the reduction in revenues in the area due to a decreased Federal presence.

13 C.F.R. § 120.862. The maximum amount of an SBA-guaranteed debenture is $1 million, unless a project meets one of the public policy goals set forth above, in which case this amount is raised to $1.3 million. The 504 Program cannot be used for working capital or inventory, the consolidation or repayment of debt, or for refinancing. An extended loan repayment period of up to 20 years is available through the 504 Program, and interest rates are fixed at the time of the debenture.

The following information related to SBA's 504 Program is from SBA's Performance and Accountability Report for FY 2002:

504 Guaranteed Debenture Program	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Number of 504 loans approved	4,930	5,284	4,565	5,213	5,480
Dollar volume of 504 loans (net)	$1.8 billion	$2.0 billion	$1.8 billion	$2.3 billion	$2.5 billion
Loans to start-ups	NA	1,027 (20%)	925 (20%)	978 (19%)	989 (18%)
Loans to 51% or more minority-owned firms	744	917	893	1,100	1,114
Loans to 51% or more women-owned firms	837	787	717	974	919
Loans to 51% or more veteran-owned firms	423	488	407	409	437
Number of jobs created and retained	113,966	119,586	104,721	104,702	116,048

In FY 2002, there were 3,138 guaranteed loans made under the 504 Program that exceeded $300,000 (57.26 percent of all 504 guaranteed loans).

The 504 Program includes the following special designation of CDCs, which, in FY 2002, made up 47.43 percent of all 504 guaranteed loans:

Premier Certified Lender (PCL) Program. Pursuant to the Small Business Investment Act of 1958, as amended, SBA delegates the responsibility to experienced and qualified CDCs to issue an SBA guaranty on a loan without prior approval by SBA. 15 U.S.C. § 697e. In FY 2002, there were 778 PCL Program guaranteed loans, approximately 14.2 percent of all 504 guaranteed loans. The total dollar value of PCL Program guaranteed loans made in FY 2002 was approximately $369,252,000, with an average of approximately $474,617 per loan. Of the 3,138 loans in excess of $300,000 that were made under the 504 Program in FY 2002, a total of 485 were made under the PCL Program.

Accredited Lenders (AL) Program. Under the AL Program, SBA delegates greater authority to qualified CDCs to underwrite, process, and close 504 guaranteed loans. Congress has mandated that SBA expedite the processing of loan applications which AL Program CDCs submit to SBA. 15 U.S.C. § 697d. In FY 2002, there were 1,821 ALP guaranteed loans, approximately 33.23 percent of all 504 guaranteed loans. The total dollar value of ALP guaranteed loans made in FY 2002 was $844,544,195, with an average of approximately $463,780 per loan.

2.3 ANALYSIS OF BORROWERS ASSISTED BY SBA-GUARANTEED LOANS

To be eligible for an SBA-guaranteed loan, a business must meet SBA size criteria set forth in 13 C.F.R. Part 121 for the business' respective industrial classification. 13. C.F.R. § 120.100. All borrowers under the 7(a) and 504 Programs (hereinafter "7(a) and 504 borrowers") are classified by type of business based upon the Standard Industrial Classification (SIC) codes set forth in the size standards in 13 C.F.R. Part 121. [5]

As part of the preparation of this PEA, an analysis of 7(a) guaranteed loans made between 1990 and 2000 was conducted to develop a breakdown of borrowers by business type, based on SIC Codes.[6] The data shows that during this ten-year period, approximately 45 percent of 7(a) guaranteed loans were allocated to the wholesale and retail trades, and approximately 30 percent of the guaranteed loans were allocated to service industries. Manufacturing businesses accounted for approximately 12 percent of the guaranteed loans. The remaining business types were agriculture and related businesses (2.8%); mineral industries (0.22%); construction industries (5.4%); transportation, communication, and utilities (3.0%); and finance, insurance, and real estate (1.34%) (this latter category would exclude loans for investment and development, which, as noted in the following section, are not eligible for SBA business loan assistance).

An analysis of the types of businesses that were supported by the 504 Program revealed a breakdown similar to the 7(a) program. Approximately 36.6% was allocated to the wholesale and retail trades, approximately 33.1% was allocated to service industries, and 18.8% to manufacturing. Agriculture and related industries (2.5%); mineral industries (0.9%), construction industries (4.5%); transportation, communication, and utilities (2.9%); and finance, insurance, and real estate (1.55%) accounted for the remaining industry sectors.

Lenders participating in the 7(a) Program and CDCs participating in the 504 Program are requested to identify whether guaranteed loans are being made in rural or urban areas. A "Rural

[5] In 2001, SBA adopted the North American Industry Classification System (NAICS) in place of the Standard Industrial Classification (SIC) codes that the Agency previously employed.

[6] As the NAICS codes are different from the SIC codes, SBA's analysis of the nature of its small business borrowers for purposes of this PEA has been limited to 1990 to 2000 when the SIC codes were employed.

Area" is defined as a political subdivision or unincorporated area in a non-metropolitan county (as defined by the Department of Agriculture), or, if in a metropolitan county, any such subdivision or area with a resident population under 20,000. SBA Standard Operating Procedure ("SOP") 50-10(4)(E), Subpart A, Ch. 1, Par. 3. The data from guaranteed loans made during FY 2002, set forth below, shows that 7(a) and 504 borrowers are largely located in urban areas, and that only a small percentage of guaranteed loans made in rural areas exceed $300,000.

	Total # Loans	Total Urban Loans	Percentage Urban of Total 7(a)/504 Loans	Total Rural Loans	Percentage Rural of Total 7(a)/504 loans
Total 7(a) and 504 loans	57,146	49,770	87.09%	7,376	12.91%
7(a)	51,666	45,483	79.59%	6,183	10.82%
504	5,480	4,287	7.5%	1,193	2.09%
7(a) greater than $300K	12,262	10,735	18.79%	1,476	2.58%
504 greater than $300K	3,152	2,539	4.44%	610	1.07%
Total 7(a) plus 504 greater than $300K	15,414	13,274	23.29%	2,086	3.65%

Thus, in Fiscal Year 2002, only 12.91 percent of 7(a) and 504 guaranteed loans were made to rural borrowers, and only 3.65 percent of all 7(a) and 504 guaranteed loans to rural borrowers exceeded $300,000.

2.4 USE OF PROCEEDS FROM SBA-GUARANTEED LOANS

The use of proceeds from the 7(a) and 504 Programs are governed by SBA regulation (13 C.F.R. § 120.120). A small business must use the proceeds of an SBA-guaranteed loan for one or more of the following:

(a) A Borrower may use loan proceeds from SBA-guaranteed loans to:

(1) Acquire land (by purchase or lease);

(2) Improve a site (e.g., grading, streets, parking lots, landscaping), including up to 5 percent for community improvements such as curbs and sidewalks;

(3) Purchase one or more existing buildings;

(4) Convert, expand or renovate one or more existing buildings;

(5) Construct one or more new buildings; and/or

(6) Acquire (by purchase or lease) and install fixed assets.

(b) A Borrower may also use 7(a) guaranteed loan proceeds for:

(1) Inventory;

(2) Supplies;

(3) Raw materials;

(4) Working capital; and

(5) Refinancing certain outstanding debts.

The regulations prohibit the use of loan proceeds for any investments in real or personal property acquired for sale or lease. 13 C.F.R. § 120.130. This is pursuant to the longstanding policy that SBA-guaranteed loans are not intended for real estate investors, developers or speculators. The regulations further provide that a borrower which uses funds to construct a new building must occupy at least 67 % of the space of that building, and that a borrower that uses funds to buy or renovate an existing building must occupy at least 51% of that building. 13 C.F.R. § 120.131.

2.5 CONSTRUCTION FUNDED BY SBA-GUARANTEED LOANS

If the proceeds of a 7(a) guaranteed loan, other than an SBAExpress loan, are used to fund construction, SBA requires in its standard loan authorizations that the lender obtain evidence that the building complies with all state and local building and zoning codes, and applicable licensing and permit requirements. Similarly, if the proceeds of a 504 debenture are used to repay an interim loan for construction costs, SBA requires that the CDC obtain evidence of compliance with all building and zoning codes and with licensing and permit requirements.

As part of its analysis of the cumulative environmental effects of its small business loan assistance programs, SBA conducted a review of agency-guaranteed loans that were made between January 1, 1997 and December 31, 2000 to analyze the use of loan proceeds with respect to construction and other purposes. This review focused on guaranteed loans made during this time period in the Greater Washington, D.C. Metropolitan Area, which included the District of Columbia, and nearby counties in Maryland (St. Mary's, Prince Georges, Charles, Howard, Anne Arundel, Frederick, Montgomery and Calvert) and Virginia (Arlington, Stafford, Prince William, Fauquier, Fairfax and Loudon) (collectively referred to below as the "Surveyed Area".) Due to the fact that SBA does not currently capture use of loan proceeds in any database, this review required an examination of individual loan files.

Between January 1, 1997 and December 31, 2000, 1,628 SBA-guaranteed loans were made under the 7(a) and 504 Programs in the Surveyed Area. SBA's review of guaranteed loans made in the Surveyed Area during this three-year period focused on loans in excess of $300,000, consistent with SBA's NEPA SOP 90-57 (1980), which categorically excludes all SBA-guaranteed loans under the 7(a) and 504 Programs unless proceeds exceeding $300,000 are used to fund construction or, for 7(a) guaranteed loans, the purchase of land. Of the 411 guaranteed loans that exceeded $300,000 (approximately 25.24 percent), SBA reviewed the 402 files that were available to ascertain how many of these loans funded construction.[7] Specifically, the Agency reviewed the use of proceeds from these loans to determine whether they were used to fund: (1) purposes other than construction or the purchase of an existing building and land or renovation; (2) the purchase of an existing building and land; (3) renovation of an existing building; (4) the construction of a new building; (5) addition to an existing building; and/or (6) purchase of unimproved land and construction of a new building.

The results of this review are set forth in the following table:

Description of Loan Proceeds	Total 7(a) and 504 Loans	Percentage of Total Loans Surveyed	Percentage of All Loans Made in Surveyed Area
1. Loans used to fund purposes other than construction, the purchase of building or land, or renovation	208	51.74%	12.77%
2. Loans used to fund the purchase of an existing building and land, but not construction or renovation	60	14.93%	3.69%
Subtotal of rows 1 and 2 -- loans not used to fund new construction or building renovation	268	66.67%	16.46
3. Loan used to fund renovation but no other construction	73	18.16%	4.84%
Subtotal of rows 1 to 3 -- loans not used to fund new construction	341	84.83%	20.94%

[7] 411 loans exceeding $300,000 were made in the Surveyed Area between January 1, 1997 and December 31, 2000. At the time the survey was performed, however, the files for nine loans were not available for review because they had been sent to a federal Records Management Center.

Description of Loan Proceeds	Total 7(a) and 504 Loans	Percentage of Total Loans Surveyed	Percentage of All Loans Made in Surveyed Area
4. Loan used for construction of a new building	20	4.98%	1.29%
5. Loan used for addition to existing building only	2	0.50%	.129%
6. Loan used to purchase unimproved land and construction of new building[8]	39	9.7%	2.4%
Subtotal of rows 4 to 6 -- loans funding new construction	61	15.17%	3.75%

Thus, as set forth in the last row of this table, of the 1,628 total SBA-guaranteed loans made in the Surveyed Area during the three-year review period only 61 (3.75 percent) involved loans of more than $300,000 used to fund new construction (i.e. construction of a new building or an addition).

Although the review of loans made in the Surveyed Area did not examine whether SBA guaranteed loans of $300,000 or less were used to finance construction, SBA believes that the data obtained from reviewing the individual loan files of loans over $300,000 is useful for purposes of this PEA to determine whether construction funded by the SBA small business loan assistance programs overall would have a significant adverse impact on the environment. SBA's NEPA SOP categorically excludes all loans unless more than $300,000 of loan proceeds are used to fund construction or the purchase of land. Further, although loans of $300,000 or less might be used to fund limited building renovation, they generally do not involve significant new construction.

One method of confirming that loans of $300,000 or less do not fund significant new construction is to look at the maturities of 7(a) guaranteed loans. Under SBA regulations, a 7(a) loan must have a maturity that does not exceed ten years unless the loan finances or refinances real estate or equipment with a useful life exceeding ten years in which case the loan can be for up to twenty-five years. 13 C.F.R. § 120.212. As set forth in SBA's SOP 50-10, which governs loan-making,

> The maximum maturity for loans used to purchase existing land and buildings, finance construction of a facility expansion and/or make significant rehabilitation of

[8] Data for two of these loans referenced loan proceeds for the purchase of unimproved land without the construction of a new building. SBA is considering these as improperly coded and treating them as if a building was constructed.

> an existing structure is 25 years plus the time estimated to be reasonably necessary to complete the construction or renovation. Significant rehabilitation is defined as improvements that cost at least one-third of the purchase price or of the current appraised value of the property.

SOP 50-10(4)(E), Subpart A, Chapter 1, Par. 7e. Although not all loans with a maturity exceeding ten years fund construction, one can conclude that loans with maturities exceeding ten years would be more likely to involve significant construction (which is intended to mean the construction of a new building or addition as well as significant rehabilitation). Further, one can conclude with much greater certainty that loans with maturities of ten years or less would be quite unlikely to involve significant construction.

A consideration of the maturities of 7(a) guaranteed loans of $300,000 or less confirms that such loans generally do not fund significant new construction. As noted above in Section 2.2, in Fiscal Year 2002, there were 11,847 guaranteed loans made under the 7(a) program that exceeded $300,000 (22.93 percent of the 51,666 total 7(a) loans made that year). Of the remaining 39,819 loans made with 7(a) guaranties in FY 2002 that were $300,000 or less, 34,903 loans (87.65 percent of 39,819) were approved with maturities of ten years or less. Thus, one can reasonably conclude that the vast majority of loans of $300,000 or less were not used for significant construction.

2.6 ENVIRONMENTAL REQUIREMENTS FOR SBA-GUARANTEED LOANS

SBA requires through the Agency's standard loan authorizations that borrowers are, and will remain, in compliance with all local, state and federal environmental laws and regulations relating to environmental contamination, including all environmental permitting requirements imposed by statute or regulation.

Requirements involving protection of wetlands, floodplains, coastal barriers, and historical properties are also set forth in SBA regulations and the Agency's SOP 50-10(4)(E), which contains requirements for the underwriting, processing and closing of SBA-guaranteed loans. 13 C.F.R. §§ 120.172 and 120.175; SOP 50-10(4)(E), Subpart A, Chapter 1, Paragraph 15; and Chapter 6, Paragraph 1. In addition, the applications for SBA-guaranteed loans (SBA Forms 4 and 1244) require borrower compliance with statutes relating to air and water quality, and prohibit borrowers from using any lead-based paint.

Further, SOP 50-10(4)(E) requires an investigation and assessment of the environmental risk of contamination associated with all primary collateral offered as security for any loan or debenture that SBA is asked to guarantee. SOP 50-10(4)(E), Subpart A, Chapter 5, Paragraph 7. This investigation typically includes one or more of the following: an Environmental Questionnaire, Transactional Screen Analysis, Phase I Audit, and Phase II Audit. These steps generally entail a review of the available federal, state and local hazardous materials and underground storage tank (UST) databases to determine the presence and approximate location of known hazardous materials at proposed project areas. Additionally, reconnaissance surveys may be conducted for evidence of hazardous substance release, such as stained soils, underground storage tanks or above-ground storage tanks, and current and past uses of the subject and adjacent properties.

If the investigation determines that environmental contaminants are present, or potentially present, on the property, the SOP precludes the loan unless the relevant state or federal environmental agency has determined that no remedial action is necessary, or other information exists demonstrating that the risk from the contamination is minimal, such as successive groundwater monitoring reports showing little or no contamination. If significant contamination is present, the SOPs bar the loan unless adequate risk management measures are in place, such as an environmental indemnification agreement to ensure that the responsible party will perform the clean-up.

SECTION 3. CUMULATIVE EFFECTS ANALYSIS

3.1 ANALYZING CUMULATIVE EFFECTS

The CEQ regulations for implementing NEPA define the term "Categorical Exclusion" as "a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required." 40 C.F.R. § 1508.4.

The CEQ regulations further define the term "[e]ffects" to include:

> (a) Direct effects, which are caused by the action and occur at the same time and place [and] (b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

40 C.F.R. § 1508.8. The CEQ regulations further advise that "[e]ffects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial." Id.

CEQ has identified the following components of the environment as generally applicable to cumulative studies:

(1) Air Quality;

(2) Surface Water and Ground Water;

(3) Soils and Lands;

(4) Wetlands;

(5) Ecological Systems;

(6) Historical and Archeological Resources;

(7) Socioeconomics; and

(8) Human Community Structure.

Considering Cumulative Effects Under the National Environmental Policy Act (CEQ 1997) (hereinafter referred to as "Considering Cumulative Effects") at 24-25.

The CEQ has explained that cumulative effects analyses, by their very nature, often requires the use of assumptions based upon the best available data:

> Cumulative effects analysis necessarily involves assumptions and uncertainties, but useful information can be put on the decisionmaking table now. Decisions must be supported by the best analysis based on the best data we have or are able to collect. Important research and monitoring programs can be identified that will improve analyses in the future, but their absence should not be used as a reason for not analyzing cumulative effects to the extent possible now.

Considering Cumulative Effects at 3.

The action by SBA of approving a guaranty of a 7(a) loan, or of a 504 debenture to fund a loan, has no direct effects upon the environment. The Agency's guarantee is given to the lender, or the investor purchasing a 504 debenture, not the borrower, which is the entity engaging a contractor to perform construction or engaged in business operations which may impact the environment. As previously noted, SBA has no involvement with the decision by a small business to seek financing from a commercial lender in order to start a new business or expand an existing business. Nor is SBA involved in the decision as to where, or how, any construction would occur, or as to how the small business conducts its operations. Indeed, other than concerns recently expressed by certain environmental groups claiming that the small business loan assistance programs contribute to urban sprawl, no complaints have materialized that these programs have had any adverse impact on the environment.

For purposes of this PEA, SBA has considered, from a programmatic cumulative impact perspective, two outcomes that may be viewed by some as indirect effects associated with the 7(a) and 504 small business loan assistance programs: (1) the business operations of borrowers after receiving the guaranteed loans; and (2) construction funded by SBA-guaranteed loans. As discussed in Section 1, the primary emphasis of this PEA is on the possible effects of the small business loan assistance programs on urban sprawl (discussed below in Section 3.10). A more generalized consideration has been given to the other components of the environment listed above. Consistent with CEQ's guidance, SBA's analysis relies on the available data.

3.2 STATE AND LOCAL ENVIRONMENTAL REVIEW PROGRAMS

The CEQ regulations define cumulative impact as including consideration of the Agency's actions in conjunction with actions by another "agency (Federal or non-federal) or person". See 40 C.F.R. § 1508.7. Thus, evaluating cumulative effects of governmental actions entails consideration of the actions of private and governmental entities other than the agency conducting the assessment. According to the CEQ, this includes actions by state governments regarding such things as permit issuance and monitoring compliance with regulatory standards, and land use decisions made by local governments. As the CEQ has advised:

> In the United States, agencies at many different levels of government share responsibilities for resource use and environmental protection. In general, the federal government is charged with functions such as national standard-setting, whereas state governments manage implementation by issuing permits and monitoring compliance with regulatory standards. …. **Land use decisions are usually made by local governments.** Local control may take the form of authority to adopt comprehensive land use plans; to enact zoning ordinances and subdivision regulations; or to restrict shoreline, floodplain, and wetland development. …. The affected environment section of a NEPA analysis should include as many regulations, criteria, and plans as are relevant to the cumulative effects problem at hand. …. How project effects fit within the goals of governmental regulations and planning is an important measure of cumulative effects on the resources, ecosystems, and human communities of the region.
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> Considering Cumulative Effects at p. 29 (emphasis added).

In accordance with this guidance, in determining the cumulative effects of SBA's small business loan assistance programs, SBA has conducted a state by state sample review of statutory and regulatory provisions applicable to a number of the components of the environment discussed below. A summary of these laws is attached as Appendix A. This review has determined that a number of state laws require that state and local governmental agencies perform NEPA-like reviews prior to issuing permits for most construction and development projects (these programs are occasionally referred to below as "mini-NEPA laws"). This is highly relevant because, as discussed in Sections 2.5 and 2.6 above, SBA, through the Agency's standard loan authorizations, requires borrowers to obtain and maintain all environmental permits and those permits required for construction.

In California, for example, where the highest number of SBA-guaranteed business loans are concentrated, the California Environmental Quality Act (CEQA), (Pub. Res. Code § 21000, et seq.) was enacted in 1970. CEQA applies to state and local government-initiated plans, projects, and regulations, and to private projects requiring discretionary approval from a local or state agency.[9]

In California, the permit process for development is coordinated with the environmental review process under CEQA. Every development project which is not exempt from CEQA must be analyzed by the lead agency to determine the potential environmental effects of that project. The analysis will determine if the project will have a significant effect on the environment, and if potential significant effects are present, agencies must avoid or mitigate those effects where feasible.

Under CEQA, the term "project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, including an activity that involves the issuance to a person by one or more public agencies of a lease, permit, license, certificate, or other entitlement for use (§ 21065). The term "public agency" includes any state agency, board, or commission, or any county, city, regional agency, public district, or other political subdivision (§ 21063).

Under CEQA guidelines (Title 14: California Code of Regulations), the environmental analysis includes consideration of the project's impacts on air and water quality; geology/soils including unique farmlands; biological resources such as habitats, and rare, endangered or threatened species; wetlands; sensitive historical, cultural or archeological locations; and societal impacts such as noise, traffic, and solid waste. (CEQA Guidelines, §§ 15064.5, 15065, Appendix G to Guidelines). California's environmental review process is rigorous and "[i]n most cases it extends beyond federal statutes established under the National Environmental Policy Act (NEPA)."[10]

New York, which also has a major portion of SBA-guaranteed loans, has a similar statute. Under the New York State Environmental Quality Review Act (SEQRA), Environmental

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[9] Source: California Environmental Resources Evaluation System website, http://ceres.ca.gov/ceqa/.

[10] (Source: California Governor's Office of Planning and Research, http://ceres.ca.gov/topic/env_law/ceqa/guidelines/intro.html).

Conservation Law (ECL), Article 8, and implementing regulations, all state and local government agencies must consider environmental impacts of any action they fund, undertake, or approve, including approval of most large commercial/industrial construction and building expansion, unless such action is exempted (ECL § 8-0109; 6 N.Y.C.R.R. § 617.3.).[11] If an action is determined not to have significant adverse environmental impacts, a determination of no significance (Negative Declaration) is prepared, and, if an action is determined to have potentially significant adverse environmental impacts, an "Environmental Impact Statement" is required. 6 N.Y.C.R.R. § 617.3

The SEQRA process uses the EIS to examine ways to avoid or reduce adverse environmental impacts related to a proposed action and includes an analysis of all reasonable alternatives to the action (6 N.Y.C.R.R. § 617.11). State and local agencies must consider a project's impact on a wide variety of resources, including: air and water quality; significant habitats and threatened or endangered species; wetlands; and historically or archeologically sensitive locations. Impact on noise, traffic and solid waste also must be considered.[12]

Other states with similar regimes include: Massachusetts, Hawaii, Minnesota, and Washington. The programs in these states are summarized in the analysis attached as Appendix A.

The environmental review that local governments within these states are required to undertake prior to approving construction permits significantly limits any potential negative impact of SBA-guaranteed lending in such states on the environment. In addition, as set forth in the attached state-by-state analysis, many other states require an environmental review of the effects of proposed actions upon one or more of the components of the environment discussed in the following sections, although they may not be as comprehensive. The environmental reviews that take place in these states also reduce any potential negative impact of SBA's small business loan assistance programs on the environment.

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[11] Among other things, New York regulations exempt from the environmental review process "construction or expansion of a primary or accessory/appurtenant, non-residential structure or facility involving less than 4,000 square feet of gross floor area and not involving a change in zoning or a use variance and consistent with local land use controls, but not radio communication or microwave transmission facilities." 6 N.Y.C.R.R. Part 617, § 617.5 (Source: New York Department of Environmental Conservation website, www.dec.state.ny.us/website/dcs/seqr).

[12] Full Environmental Assessment Form, New York Department of Environmental Conservation website, www.dec.state.ny.us/website/dcs/seqr.

3.3 IMPACT ON AIR QUALITY

As discussed in Section 3.1, above, in considering the cumulative effects of the SBA small business loan assistance programs, this PEA focuses on two indirect effects: (1) the effects of construction funded by a guaranteed loan; and (2) the effects of the day-to-day operations of a small business funded by a guaranteed loan.

Air quality is primarily regulated by the Clean Air Act ("CAA"), 42 U.S.C. §§ 7401, et seq. In 1990, Congress amended the CAA to create a "comprehensive air operating permit program for all major stationary sources of air pollution."[13] Under the amendments, states have primary responsibility for issuing permits and assuring air quality up to federal standards through State Implementation Plans ("SIPs"), which they manage with delegated authority from the Environmental Protection Agency ("EPA"). CAA § 107.[14] This responsibility includes monitoring the cumulative effects of businesses operating within their territory on overall air quality.

SBA has determined that, generally, new construction funded by 7(a) and 504 loans could have only a very limited impact on air quality. While construction activities such as grading and site preparation might suspend particulate matter during construction, any such impact would be temporary. In addition, the effects would be negligible in scale given the limited amount of financing involved. The ingress and egress of construction equipment may also be a source of mobile air pollutants such as carbon monoxide; however, these would also be short-term in nature and negligible in scale. Moreover, construction equipment would be subject to state and local emission permitting requirements.[15] In addition, typical implementation of construction Best Management Practices, such as watering construction sites and minimizing construction equipment running times, also limits potential effects to air quality.

The renovation of existing facilities could, however, lead to adverse impacts related to asbestos. If asbestos containing materials are disturbed in inappropriate and unauthorized ways

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[13] Todd B. Westersund, 1996 Ninth Circuit Environmental Review, 27 Envtl. L. 991 (Fall, 1997).

[14] Todd B. Westersund, 1996 Ninth Circuit Environmental Review, 27 Envtl. L. 991 (Fall, 1997).

[15] EPA has established emission standards for non-road diesel engines typically used in construction at 40 C.F.R. Part 89. EPA issued proposed regulations to apply these standards to a broader number of non-road diesel engines on May 23, 2003. 68 Fed. Reg. 28328.

during repair or renovation activities, asbestos fibers could be released. One is particularly likely to find asbestos in older materials in existing buildings where heat and corrosion resistance is important, such as roofing shingles, floor tiles, cement pipe and sheet, roofing felts, insulation, ceiling tiles, fire-resistant drywall, and acoustical products.[16] However, the effects of the small business loan assistance programs upon asbestos release would be marginal because, as set forth in Section 2.5 above, only 4.84 percent of all 7(a) and 504 loans exceed $300,000 and involve renovation of existing facilities.

The existing regulatory framework pertaining to asbestos further reduces any negative effects of the programs in this area. Under the authority of the Clean Air Act (CAA), EPA, through the National Emissions Standards for Hazardous Air Pollutants ("NESHAPs"), 40 C.F.R., Subpart M, §§ 61.140 through 61.157, has established regulations to protect the general public from the release of airborne asbestos fibers during the demolition or renovation of buildings. In addition, the Occupational Safety and Health Administration ("OSHA") has established regulations protecting workers from exposure to asbestos during construction and other activities (29 C.F.R. § 1926.1101). Further, states have established programs for asbestos abatement which are often more stringent than EPA's requirements.[17]

Construction activities that involve cutting, sanding or sand-blasting painted surfaces also have the potential of leading to a release of lead-based paint, which is commonly found in older buildings in painted surfaces. The use of lead in formulating most paints is now banned by the EPA. Lead materials in construction is regulated primarily under OSHA regulations (29 C.F.R. §§ 1910.1025 and 1926.62) and are for worker protection. The loan applications for 7(a) and 504 guaranties (SBA Forms 4 and 1244) prohibit borrowers from using any lead-based paint pursuant to the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4821.

With respect to the effects of business operations funded by SBA-guaranteed loans, protection of air quality is overseen through the permit requirements of the CAA. The fundamental permitting provision of the 1990 Amendments is found in CAA § 502(a), which makes it "unlawful" for "any person" to violate "any requirement of a permit" or "to operate" a

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[16] Source: Construction Industry Compliance Assistance ("CICA") Website, http://www.cicacenter.org/asbestos.html.

[17] See CICA Asbestos State Regulation Locator (http://www.cicacenter.org/asrl.html).

covered source "except in compliance with a permit issued by a permitting authority under this title." CAA § 502(a). Covered sources can apply for either individual permits or for coverage under a general permit pursuant to CAA § 504(d) that pertains to numerous similar sources. Applicable EPA regulations also allow for de minimis exemptions and exceptions for "insignificant activities and emissions levels which need not be included in permit applications." 40 C.F.R. § 70.5(c). EPA has determined that these insignificant emissions typically have inconsequential environmental impacts. 27 Entl. L. 991, 993.

As discussed in Section 2.6, SBA requires, through its standard loan authorizations, that borrowers obtain and maintain all environmental permits required by law, and all applicants for SBA-guaranteed loans must certify that they will comply with the Clean Air Act. The permitting decisions by state and local authorities necessarily entail a review as to whether permit issuance will unduly affect the NAAQs or cause non-compliance with the State SIPs, thereby also serving to ensure that the cumulative effects of the small business loan assistance programs do not have a significant adverse impact on air quality.

Although this analysis supports the conclusion that the cumulative effects of the 7(a) and 504 small business loan assistance programs do not have a significant environmental impact, an examination of the types of borrowers that are funded by SBA-guaranteed loans further confirms this conclusion. As set forth in Section 2.3 above, between 1990 and 2000, approximately 76.3 percent of 7(a) guaranteed loans, and approximately 71.25 percent of 504 guaranteed loans, were made to businesses in the wholesale or retail activities, the financial industry, and businesses providing services. It is reasonable to conclude that most of these businesses would not emit air pollutants (recognizing, however, that a small category of such borrowers, such as dry cleaners, could emit such pollutants). And, although businesses engaged in manufacturing might be more likely to discharge air pollutants, as discussed above in Section 2.3, between 1990 and 2000, only 12 percent of 7(a) guaranteed loans, and less than 19 percent of 504 guaranteed loans, went to businesses classified as manufacturing.

The comprehensive regulatory and permitting scheme in place to protect air quality, the requirement that SBA borrowers obtain all required environmental permits, and the small number of borrowers that would potentially emit air pollutants at all or cause the release of asbestos or lead paint, supports the conclusion that the cumulative effects of SBA's issuance of guaranties under the small business loan assistance programs do not result in a significant impact upon air quality.

3.4 IMPACT ON WATER RESOURCES AND WATER QUALITY

Water resources refer to the occurrence, availability, and physical, chemical, and biological characteristics of surface and ground water, including water quality for aquatic communities and public water supplies. Water bodies include aquifers, springs, streams, rivers, lakes, reservoirs, estuaries, and near-shore and offshore water. Water quality encompasses the level of pollutants that affect the suitability of water for a given use. Water use classification generally includes: public water supply, recreation, propagation of fish and other aquatic life, agricultural use, and industrial use. Water resources would also include specifically identified rivers and river segments slated for protection in the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1271-1287.[18]

(The potential impact of hazardous or toxic materials on underground water systems is discussed in Section 3.5.D. below. In addition, although wetlands could be considered a water resource, that topic is addressed in Section 3.6 below.)

The Clean Water Act ("CWA"), 33 U.S.C. §§ 1251 et seq., sets forth procedures for effluent limitations, water quality standards and implementation plans, national performance standards, point source (e.g., municipal wastewater discharges) and non-point (e.g., stormwater) source programs, and establishes the National Pollutant Discharge Elimination System ("NPDES") under Sections 401 and 402. According to an EPA summary of environmental laws, NPDES Permits are required for wastewater discharges from municipal, industrial, commercial, and certain agricultural sources directly to any surface water, unless a facility is clearly exempted.[19] This summary further explains that NPDES permits are not required if a facility discharges wastewater to a municipal sewer system for treatment at a publicly owned treatment works ("POTW"), and that these discharges are regulated by pretreatment regulations for

[18] As discussed above in Section 2.3, only 3.65% of all SBA-guaranteed loans in excess of $300,000 were made in rural areas. As many wild and scenic rivers are located in rural areas, and in light of the discussion of impacted water resources below, SBA has concluded that the overall impact of such loans on wild and scenic rivers is minimal.

[19] Source: EPA Small Business Environmental Home Page, Summaries of Major Environmental Laws/Regulations and EPA Links (http://www.smallbiz-enviroweb.org/compliance/lawepalinks.html .

industry categories under the CWA. EPA regulations also outline NPDES permit application requirements for stormwater discharges associated with industrial activity (40 C.F.R. Part 122). The EPA summary further explains that "[i]ndustries within certain industrial sectors that discharge stormwater associated with industrial activity must obtain an individual stormwater permit or obtain coverage under a promulgated stormwater general permit."

Compliance with NPDES permitting requirements is obligatory, CWA § 402(k), and failure to comply with the permitting requirements may result in civil, administrative, or criminal penalties. CWA § 319.

Pursuant to the CWA, EPA has delegated day-to-day responsibility to most of the states for implementing most aspects of the CWA including the issuance of NPDES permits for all pollutants, except that responsibility has not been delegated for dredged and fill material. CWA § 402. EPA manages the permitting requirements under the CWA in those states that do not have delegated authority. EPA oversees state administration of the CWA and promulgates regulations governing NPDES permits. Id. There is no statutory exception to permitting requirements and EPA has not promulgated any de minimis exclusions.

It should be noted that SBA has no statutory or regulatory authority to issue or modify any permits with respect to matters governed by the CWA. Thus, as is the case for air quality, the responsibility for assessing the cumulative effects of business operations on water quality is given to EPA and those states with EPA-approved water programs.

In considering the cumulative programmatic effects of construction funded by 7(a) or 504 loans, it is significant that, according to available data, only 3.75% of all SBA guaranteed loans exceed $300,000 and involve significant new construction (see Section 2.5 above). Although impact of construction on water resources and water quality from this limited number of loans depends on project-specific details, storm water runoff from construction activities can have an impact on water quality; as stormwater flows over a construction site, it picks up pollutants like sediment, debris, and chemicals, and the runoff can harm or kill fish and other wildlife.[20]

Under EPA regulations issued in 1999, the NPDES stormwater program regulates construction activities (including other land-disturbing activities) that disturb one acre or more,

[20] See EPA Final Rule on Stormwater Discharge, 64 Fed. Reg. 68728 (Dec. 9, 1999).

and smaller sites that are part of a larger common plan of development or sale. 40 C.F.R. § 122.26 (issued 64 Fed. Reg. 68838 (Dec. 10, 1999). These regulations became effective on March 10, 2003. 40 C.F.R. § 122.26(e)(8).[21] Sites disturbing five acres or more were regulated previously.

SBA requires through its loan authorizations that applicants for Agency-guaranteed loans must apply for and obtain the appropriate local, state and federal permits before construction. As a condition of obtaining these permits, guarantee-applicants would be required to obtain an NPDES permit if the construction would affect more than one acre of land or less than one acre if part of a larger common plan or development. In addition, applicants would be required to implement Best Management Practices (BMPs) and other mitigation measures to protect water resources and water quality.[22] Given the required compliance with these permitting requirements, SBA has determined that the cumulative effects of construction funded by agency-guaranteed loans on water resources and water quality would be minor, if any. For those projects that are too small in scale to require permitting under applicable regulations, impact on water resources and water quality would be negligible.

In examining the effects of business operations of small business borrowers receiving assistance under the 7(a) and 504 Programs, SBA's analysis of the cumulative effects upon water quality is very similar to that set forth above for air quality in the preceding section because of the similar nature of the two regulatory regimes. As discussed in Section 2.6, SBA requires, through the Agency's standard loan authorizations, that borrowers obtain and maintain all environmental permits required by law, and all applicants for SBA-guaranteed loans must certify that they will comply with the CWA. Thus, the permitting requirements, and state governmental review of the effect of a proposed permit on overall water quality that necessarily precedes issuance of a NPDES permit, will prevent or minimize effects from SBA borrowers upon water quality.

Similar to the discussion of the effects on air quality in Section 3.3 above, only a small percentage of borrowers of 7(a) or 504 loans are engaged in manufacturing (12 percent of 7(a)

[21] See also EPA NPDES website, http://cfpub1.epa.gov/npdes/stormwater/const.cfm?program_id=6.

[22] EPA requires that medium and large municipalities mandate the use of Best Management Practices to prevent runoff from construction. 40 C.F.R. § 122.34(b)(4)(ii).

guaranteed loans, and slightly less than 19 percent of 504 guaranteed loans). Similarly, only a small portion of these loans -- approximately 30 percent of 7(a) guaranteed loans, and 19 percent of 504 guaranteed loans -- are used to fund start-up businesses. These statistics provide additional evidence that the overall cumulative effects of the SBA small business loan assistance programs do not have a significant impact upon water quality.

Due to the comprehensive regulatory program in place under the CWA, managed by both EPA and the states, and the small number of 7(a) and 504 borrowers that are likely involved in construction or business operations with potentially significant discharges of contaminants into water resources, it is reasonable to conclude that the cumulative effects of the small business loan assistance programs does not have a significant impact upon water quality and water resources.

3.5 IMPACT ON SOIL AND LANDS

This section addresses the cumulative effects of construction and small business operations that are funded by SBA-guaranteed loans upon protected farmlands (subsection A), floodplains (subsection B), and coastal barriers (Subsection C). Subsection D addresses the impact to soils and groundwater systems from environmental contamination resulting from the operations of small businesses that have received assistance through the 7(a) or 504 Programs. Subsection E considers the cumulative effects of the construction funded by loans backed by an SBA guaranty upon soil quality in general.

SBA has determined that day-to-day business operations of SBA borrowers are unlikely to have significant impacts on soil quality because, as set forth above in Section 2.4, the vast majority of borrowers are involved in retail and wholesale trades and provide financial and other services. It is possible that agricultural and mining activities could be more disruptive to soil, but SBA typically does not fund borrowers that would fall within either category. The United States Department of Agriculture is primarily responsible for providing financial assistance to such agricultural entities. 13 C.F.R. § 120.103. Therefore, although the Agency has authority to guaranty loans to agricultural enterprises, SBA, as a general rule, funds only businesses related to agriculture, such as feedlots, not farming operations. As set forth in Section 2.3, moreover, less than 2.8 percent of all borrowers on SBA-guaranteed loans fall with agricultural or related businesses. Similarly, as also discussed in Section 2.3, less than .25 percent of 7(a) loans and less that 1 percent of 504 loans were made to mining-related businesses. From a programmatic perspective, SBA does not view these percentages of borrowers to have a likely significant cumulative impact upon soils.

A. Protected Farmlands.

One issue of importance is the potential impact of loans assisted by SBA guarantees upon protected farmlands because this is a land resource that is specifically governed by the Farmland Protection Policy Act (FPPA), 7 U.S.C. §§ 4201, et. seq. The statement of purpose in the FFPA sets forth a policy to "minimize the extent to which Federal programs contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent practicable, will be compatible with State, unit of local government, and private programs and policies to protect farmland." 42 U.S.C. § 4201. The Act protects prime farmland and unique farmland (as those terms are defined in the statute), and other farmlands deemed to be of statewide importance as determined by the particular state and the Secretary of Agriculture (collectively referred to as "protected farmlands"). Id.

In considering whether construction funded by SBA-guaranteed loans might lead to the conversion of protected farmlands or involve actions contrary to state and local policies to protect farmland, SBA is focusing on loans made in rural areas where most such farmlands are located.[23] As discussed above in Section 2.3, less than 13 percent of all 7(a) and 504 loans in FY 2002 were made to borrowers in rural areas. Only 3.65% of all loans were made to rural borrowers and exceeded $300,000. It is also important to note that certain types of 7(a) guaranteed loans may not be used to fund construction. These include: EWCP guaranteed loans, QET guaranteed loans, and Caplines guaranteed loans, excluding Builders Caplines. Excluding guaranteed loans made under the EWCP, the QET Program, the Caplines Programs (other than Builders Caplines), there were only 2,022 loans (3.53 percent of all 7(a) and 504 loans) made to rural borrowers exceeding $300,000.

Additionally, as discussed in Section 3.2, above, California, New York, Massachusetts, Hawaii, Minnesota and Washington all have "mini-NEPA laws" which require local county and

[23] Source: U.S. Natural Resources Conservation Service website, http://www.nrcs.usda.gov/technical/land/meta/m4983.html

municipal governments to consider the environmental effects of granting a construction permit upon various resources including prime and unique farmlands. As discussed in Section 2.5 above, SBA requires borrowers of SBA-guaranteed loans to obtain all necessary construction permits. Thus, any impact of the proposed construction in these six states would be screened pursuant to these mini-NEPA laws for potential harm to resources such as protected farmlands. Thus, in assessing cumulative effects, it is appropriate to exclude the 440 guaranteed loans in excess of $300,000 made in these states in FY 2002 from the 2,022 guaranteed loans discussed in the preceding paragraph. Accordingly, in FY 2002, only 1,582 guaranteed loans, 2.76 percent of all guaranteed loans made under the 7(a) and 504 Programs, were made in rural areas and above $300,000, and it is only those that would have potential significant impacts on prime and unique farmlands.

However, not all loans to rural borrowers necessarily entail construction. Based upon the data available to SBA, as discussed above in Section 2.5, only 15.17 percent of SBA-guaranteed loans exceeding $300,000 are used to fund new construction. Applying this percentage to the 1,582 loans discussed in the preceding paragraph, it is reasonable to conclude that there were only 240 loans in excess of $300,000 that involved significant new construction in rural areas.

Given the extremely small percentage of the small business loan assistance programs at issue, and the fact that historically, SBA has not encountered any public controversy regarding the impacts of these programs upon protected farmlands, SBA has determined that the cumulative effects of these programs do not appear to have a significant impact upon protected farmlands.

B. <u>Floodplains</u>.

Floodplains refer to lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands. Executive Order 11988 requires Federal agencies to take action to minimize occupancy and modification of floodplains, and that Federal agencies proposing to site a project in the 100-year floodplain consider alternatives to avoid adverse effects and development incompatible with the floodplain.

SBA regulations codified at 13 C.F.R. § 120.172 specify that all guaranteed loans must conform to requirements of Executive Order 11988, and that lenders and CDCs must comply with requirements applicable to them. According to this regulation, applicants of SBA-guaranteed loans must show: 1) whether the location for which financial assistance is proposed is in a floodplain; 2) if it is in a floodplain, that the use of proceeds is in compliance with local land use plans; and 3) that any necessary construction or use permits will be issued.

SBA requires that applicants for a guaranteed loan complete Federal Emergency Management Agency (FEMA) Form 81-93 to determine whether the project property is located within a designated Special Flood Hazard Area (SFHA). The SFHA is that land within the floodplain of a community subject to a 1 percent or greater chance of a flood in any given year, commonly referred to as the 100-year Flood Plain. SBA requires that any borrower with a project that is located within a SFHA must obtain federal flood insurance prior to first disbursement of the loan. Under section 1315 of the National Flood Insurance Act of 1968, FEMA is prohibited from providing flood insurance unless a community has adopted and enforced floodplain management regulations that meet or exceed the floodplain management criteria established in accordance with Section 1361(c) of the Act. These floodplain management criteria are contained in 44 C.F.R. Part 60, Criteria for Land Management and Use. The emphasis of the National Flood Insurance Program floodplain management requirements is directed toward reducing threat to lives and damage to property in flood-prone areas. Over 19,700 communities presently participate in the NFIP. These include nearly all communities with significant flood hazards.[24]

Given the requirement that applicants identify whether the project site is located within a SFHA, the requirement for flood insurance, and the widespread coverage of the FEMA-directed flood plain management efforts in nearly all communities with significant flood hazards, SBA has determined that the cumulative effects of the small business loan assistance programs do not have a significant impact on the nation's floodplains.

C. Coastal Barriers.

Coastal Barrier Resource System (CBRS) units are environmentally-sensitive and hazard-prone coastal barrier islands. These coastal barriers provide protection for diverse aquatic habitats and serve as a defense against the impacts of severe coastal storms and erosion. The Coastal Barrier Resources Act (CBRA) of 1982 prohibits Federal funding for any project that could result in an increase in development in the CBRS units. SBA regulations (13 C.F.R.

[24] Source: FEMA National Flood Insurance Program Description (Aug. 1, 2002), http://www.fema.gov/fima/nfip.shtm.

120.175) and the Agency's SOP 50-10(4)(E) prohibit an SBA-guaranteed loan from being made within the mapped units of the CBRS. In addition, states that are within the CBRS have laws and regulations restricting development within the CBRS.[25] See State-by-State survey, Appendix A. Therefore, the cumulative effects of construction funded by SBA-guaranteed loans will not have any significant impact upon coastal barriers.

D. <u>Contamination of Soil and Groundwaters From Hazardous and Toxic Materials.</u>

Hazardous substances, hazardous wastes, petroleum products and other contaminants that are harmful to the environment are regulated through a combination of federally mandated laws and state-specific laws. Federal statutes governing the assessment and disposal of these materials include the Resource Conservation and Recovery Act, 42 U.S.C. § 6901; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601; and the Toxic Substances Control Act, 15 U.S.C. § 2601.

As discussed in Section 2.6, SBA's SOP 50-10(4)(E) requires an investigation and assessment of the environmental risks relating to all primary collateral offered as security for any loan or debenture that SBA is asked to guaranty. If significant contamination is present in soil or groundwater, the SOPs preclude any financial assistance unless adequate protection from that risk is obtained, such as by means of an indemnification agreement, that promotes the clean-up by the responsible party. The environmental investigation that is required for all SBA-guaranteed loans further ensures that SBA borrower construction or business operations will not unduly exacerbate any pre-existing contamination. In addition, the environmental due diligence rules require a determination as to whether renovation of an existing facility would lead to the disturbance of asbestos-containing materials, and require that adequate precautions be taken in place to ensure that any release of asbestos is adequately remediated. Moreover, as noted in section 3.3 above, the existing regulatory framework appears to adequately address potential asbestos disturbance.

Hazardous materials that might impact soil could result from the business operations of some borrowers of SBA-guaranteed loans, such as dry cleaning operations (e.g., solvents) or

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[25] These states include: Alabama, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, New Jersey, New York, Rhode Island, North Carolina, South

service stations (e.g., gasoline). However, as discussed in Section 2.6 above, SBA requires, as a condition for obtaining an SBA-guaranteed loan, that loan applicants comply with all environmental laws, including the need to obtain and maintain all necessary environmental permits. Therefore, wastes must be stored and disposed of in a proper manner, in compliance with Federal, State, and local regulations, and adverse impacts resulting from hazardous wastes are negligible.

In light of the existing permitting and regulatory framework, and SBA's pre-loan environmental due diligence rules, there do not appear to be any substantial, cumulative effects related to hazardous materials and wastes as a result of borrower operations funded by SBA guaranteed loans.

E. Effects of Construction Upon Soil Quality.

In considering the potential effects of construction funded by SBA-guaranteed loans upon soil quality, SBA notes that, according to available data, only 3.75% of all guaranteed loans exceed $300,000 and involve new construction (see Section 2.5 above).

As the vast majority of these loans are made in non-rural, more urbanized settings, as discussed in Section 3.5.A above, where the land surface has been previously disturbed, such as retail centers in urban or suburban areas, and given the small percentage of SBA-guaranteed loans involving construction, these projects are unlikely to have considerable impact on soil quality. In addition, borrowers are required to obtain construction permits, as discussed in section 2.5, which would typically set forth requirements to the extent that unique or unusual soils were to be encountered during such construction. While the development of the foundation of new small business facilities may include the excavation or deposition of a limited amount of fill material, impacts to soil quality as a result of these activities would be minor given the limited nature of small business projects. Facility conversion, expansion or renovation may require site improvements within the project area such as grading, street construction, parking lot development, and landscaping. But, impacts to soil quality as a result of these activities would, once again, be minor given the limited nature of small business projects.

Carolina, Texas, Virginia, and Wisconsin. Source: U.S. Fish and Wildlife Service website, http://www.fws.gov/cep/cbrunits.html.

3.6 IMPACT ON WETLANDS

In considering the cumulative effects on wetlands, the primary focus is on the effects of construction funded by SBA-guaranteed loans. This is because business operations funded by SBA-guaranteed loans, in and of themselves, are unlikely to have significant impact on wetlands.

The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. 40 C.F.R. § 230.3(t).

Under Executive Order 11990, Federal agencies are required to minimize the destruction, loss, or degradation of wetlands and preserve and enhance their natural and beneficial values. The application that is completed by applicants for an SBA-guaranteed loan expressly discourages any construction that could adversely affect wetlands in accordance with Executive Order 11990.

The United States Army Corps of Engineers ("USACE") issues permits for discharges of dredged and fill materials into wetlands pursuant to Section 404 of the CWA, 33 U.S.C. § 1344. Section 404(e) authorizes the USACE to issue regional or national permits, that preclude the need for obtaining an individual site-specific permit, for types of activities that the USACE determines "will cause only minimal adverse environmental effects." The provision also authorizes EPA to promulgate standards for permits issued by the USACE for dredged and fill material, to comment on Corps permits, and to veto such permits (CWA § 404(b)(1), (c)).

The overall regulatory guidelines for permitting standards under Section 404 of the CWA provide that no discharge of dredged or fill material will be permitted if any of the following apply: if there is a practicable alternative with less adverse impact; if such discharge would violate water quality standards; if such discharge will jeopardize endangered species; if such discharge will degrade the nation's waters; if appropriate and practicable steps have not been taken to minimize the impact of the discharge. 40 C.F.R. § 230.10. Applicable EPA regulations further delineate the numerous factors that must be considered in making the factual determinations under 40 C.F.R. § 230.10, specifically including the potential impacts on wetlands. 40 C.F.R. § 230.41.

Unless exempted by regulation, any dredging or filling of a wetland requires a Section 404 permit issued by the USACE pursuant to section 404 of the CWA. 33 C.F.R. § 323.3. If deemed appropriate, the USACE will issue a permit for the discharge of dredged or fill material into a wetland after notice and opportunity for public hearing. 33 C.F.R. § 325.2.

In addition, the CWA authorizes the USACE to issue nationwide permits for categories of activities involving discharges that have minimal adverse environmental effects. 33 U.S.C. § 1344(e)(1). The USACE has exempted from the need to obtain a permit dredging and filling of 1/10 or less of an acre of wetlands unless specified circumstances exists. 67 Fed. Reg. 2020, 2081 (Jan. 15, 2002).

As set forth in Sections 2.5 above, based on available data, only 3.75 percent of all SBA-guaranteed loans fund significant new construction and are in excess of $300,000. Of the limited number of SBA-guaranteed loans at issue, given the relatively low average dollar amount of SBA-guaranteed loans, new construction projects would generally be relatively small in scope and would not be likely to affect wetlands to an extent greater than a tenth of an acre. These projects would generally be covered by the USACE national permit and the USACE has already determined that projects of such a size would not have significant adverse environmental impacts on wetlands. Any greater wetland involvement would require a permit under Section 404 of the CWA, and, as discussed above in Sections 2.5 and 2.6, standard authorizations for SBA-guaranteed loans require borrowers to obtain all needed construction and environmental permits. Similarly, SBA regulations require that any necessary permits be obtained in the event that an SBA-guaranteed loan would affect wetlands. 13 C.F.R. 120.172(a)(3). In addition, as the state-by-state review of environmental laws and regulations reveals, most states require wetland impact analysis in a host of permitting contexts. (See Appendix A.)

Given the limited number of SBA-guaranteed loans involving significant new construction, the relatively small-scale of construction generally undertaken by relevant borrowers, and the requirements that borrowers obtain USACE permits for wetland filling, the cumulative effects of SBA small business loan assistance programs on wetlands are considered to be minimal.

3.7 IMPACT ON ECOLOGICAL SYSTEMS

Ecological systems include biological resources such as wildlife, plants, and other organisms and their associated habitats. Ecological systems can be affected by habitat fragmentation, degradation of sensitive ecosystems, and the loss of fish and wildlife populations resulting from the creation of multiple barriers to migration. In accordance with CEQ Guidelines, SBA has considered the cumulative effects of SBA-guaranteed loans on biological resources, which includes resources such as endangered and threatened species and critical habitats. In this regard, SBA's review has focused on the potential impacts from construction because it is the Agency's conclusion that significant impacts are highly unlikely to result from small business operations by themselves.

The Endangered Species Act (ESA) of 1973, 16 U.S.C. §§ 1531, et seq., requires Federal agencies to consider the impacts of their actions on threatened and endangered species of fish, wildlife, and plants, and their habitats, and to take steps to conserve and protect these species. The National Marine Fisheries Service (NMFS) is responsible for identifying and listing threatened or endangered marine species, and the United States Fish and Wildlife Service ("Fish and Wildlife") is responsible for identifying and listing all other plants and animals that are threatened or endangered. Under Section 7 of ESA, Federal agencies are required to consider the impacts of their actions on federally listed threatened and endangered species. Regulations implementing Section 7(a) of the ESA are set forth at 50 C.F.R. § 402.01.

For the purpose of this analysis, it is useful to make a distinction between biological resources that occur in more urbanized settings and those that occur in less developed areas. In general, urban settings, where the land has been previously disturbed and developed, possess a lower diversity of native species and higher numbers of non-native and/or opportunistic species that are adapted to living in an urban environment. Biological resources within or adjacent to that urban environment are also subject to a higher degree of habitat fragmentation from roads, property boundaries, water diversions, and other features. In project areas outside the built-up environment, habitats are not as subject to fragmentation and, typically, there is a higher occurrence of native species.

Threatened and endangered species generally do not tend to favor more urbanized settings where the majority of SBA-guaranteed loans are made. Isolated locations where critical habitats are typically found would generally not be well suited for the success of small businesses. Small businesses typically locate near populated areas, road networks, shopping areas, and other areas in close proximity to potential customers and employees.

Given that endangered and threatened species, and critical habitats, are more likely to be located in rural, non-urban, areas, the analysis of the cumulative effects of SBA's small business loan assistance programs is similar to that discussed in section 3.4 above regarding impact on protected farmlands. As discussed above in Section 2.3, less than 13 percent of all 7(a) and 504 loans in FY 2002 were made to borrowers in rural areas, and only 3.65% of all guaranteed loans made to rural borrowers in that fiscal year exceeded $300,000. It is important to note that certain types of 7(a) guaranteed loans may not be used to fund construction. These include: EWCP guaranteed loans, QET guaranteed loans, and Caplines guaranteed loans, excluding Builders Caplines. Excluding guaranteed loans made under the EWCP, the QET Program, the Caplines Programs (other than Builders Caplines), there were only 2,022 guaranteed loans to rural borrowers exceeding $300,000 in the 7(a) and 504 programs. This represents 3.53 percent of all business guaranteed loans.

Additionally, as discussed in Section 3.2, above, California, New York, Massachusetts, Hawaii, Minnesota and Washington all have "mini-NEPA laws", which require local county and municipal governments to consider the environmental effects of granting a construction permit upon various resources including endangered species. As discussed in Section 2.5 above, SBA requires borrowers of SBA-guaranteed loans to obtain all necessary construction permits, and, thus, any impact of the proposed construction in these states would be screened pursuant to these mini-NEPA laws for potential harm to resources such as endangered species. Thus, in assessing cumulative effects, it is appropriate to exclude the 440 guaranteed loans in excess of $300,000 made in these states in FY 2002 from the 2,022 guaranteed loans discussed in the preceding paragraph. Accordingly, in FY 2002, only 1,582 guaranteed loans, 2.76 percent of all guaranteed loans made under the 7(a) and 504 Programs, were made in rural areas above $300,000, with potential impacts on endangered species.

However, only a small percentage of large loans made to borrowers in rural areas (2.76 percent) would also involve significant construction exceeding $300,000. As discussed above in Section 2.5, the data available to SBA indicates that only 15.17 percent of SBA-guaranteed loans exceeding $300,000 are used to fund new construction. Applying this data to the data regarding rural loans in excess of $300,000, 15.17 percent of 1,582 applicable rural loans would equal approximately 240 loans.

Given the very small percentage of guaranteed loans at issue, it appears that the cumulative effects of SBA's small business loan assistance programs do not have a significant impact upon ecological resources. In addition, the small scale of most SBA-sponsored projects would minimize the potential impact on special status species and critical habitats. Moreover, in rural areas, the facility planning and building permit approval processes would typically identify the need to address any local, state, and Federal special status species that may be affected by the proposed project.

3.8 IMPACT ON HISTORICAL, CULTURAL AND ARCHAEOLOGICAL RESOURCES

In accordance with CEQ Guidelines, SBA has considered the cumulative effects of SBA-guaranteed loans on historical, cultural and archaeological resources. SBA's review has focused on the potential impacts from construction because SBA does not perceive any likely significant impact from small business operations.

Cultural resources are protected by a variety of laws and regulations, including the National Historical Preservation Act (NHPA) of 1966, 16 U.S.C. § 470, as amended, the Archaeological Resources Protection Act (ARPA), 16 U.S.C. § 470aa; the American Indian Religious Freedom Act (AIRFA), 42 U.S.C. § 1996; and the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001.

Section 106 of the NHPA and implementing regulations (36 C.F.R. 800) outline the procedures to be followed in the documentation, evaluation, and mitigation of impacts upon cultural resources. The section authorizes State Historical Preservation Officers (SHPOs) to consult with federal agencies regarding the undertakings that may affect historic properties. 16 U.S.C. § 470a(b)(3)(I). The Section 106 process includes identifying significant historic properties and districts that may be affected by the proposed actions or alternatives, and mitigating adverse effects to those properties listed, or eligible for listing, in the National Register of Historic Places (NRHP) (36 C.F.R. § 60.4). Historic properties are defined as archaeological sites, standing structures, or other historic resources listed on, or determined potentially eligible for, the NRHP. Section 470h-2(k) prohibits agencies from granting a loan guaranty to any applicant whose intentional acts have or will have a significant adverse effect upon historic property unless the agency, after consulting with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant.

As discussed above in Section 2.5, according to available data, only 3.75 percent of SBA-guaranteed loans are in excess of $300,000 and also finance new construction. Thus, a very limited portion of the 7(a) and 504 Programs involve loans with potential significant impact on historical or archaeological resources.

Further, as also discussed in Section 2.5, applicants are required to obtain all necessary construction permits as a prerequisite to obtaining an SBA-guaranteed loan. In order to obtain such a permit, applicants would need the approval of the relevant state, county or local authority. As indicated by the state-by-state analysis attached as Appendix A, virtually every state requires that an assessment of a project's potential effects upon historical, cultural or archaeological resources be performed prior to the issuance of such a permit. Thus, it is not likely that an applicant would obtain a permit to perform construction that would significantly impact a historical or archaeological resource.

In light of the limited portions of SBA's small business loan assistance programs involving significant new construction, and the construction permitting process, SBA has determined that the cumulative effects of the 7(a) and 504 Programs do not have a significant impact on historical, cultural or archaeological resources.

3.9 IMPACT ON SOCIOECONOMIC FACTORS

Socioeconomic factors include the availability of jobs, business characteristics, and the nature of the commerce of a given city or region. As explained in Section 1, the mission of SBA focuses on assisting the nation's small businesses in meeting their financing needs. The agency's small business loan assistance programs enhance the ability of lenders to provide long- and short-term loans to small businesses that might not qualify through normal lending channels. The development of small businesses leads to the creation of new jobs. Indeed, as described in Section 2.2, one of the specific goals of the 504 CDC program is to encourage economic development within a community and encourage job retention and creation. By regulation, CDC portfolios are required to create or retain at least one job for every $35,000 of SBA-guaranteed debenture proceeds. 13 C.F.R. § 120.829. As discussed in Sections 2.1 and 2.2, in each of the past five fiscal years, the 7(a) Program has resulted in the creation, on average, of 322,761 new jobs, and the 504 Program has led, on average, to approximately 111,805 new jobs.

3.10 IMPACT ON HUMAN COMMUNITY STRUCTURE

A. Environmental Justice and Demographics.

Executive Order 12898 (Environmental Justice) requires Federal agencies to make the achievement of environmental justice part of their mission. Agencies are required to identify and correct programs, policies, and activities that have disproportionately high adverse human health or environmental effects on minority and low-income populations. EO 12898 also tasks Federal agencies with ensuring that public notifications regarding environmental issues are concise, understandable, and readily accessible.

SBA has not identified any adverse human health or environmental effects from its small business loan assistance programs on minority and low-income populations. As described in Section 1 above, one objective of the SBA loan program is to support minority and women-owned businesses and other entities that have the most difficulty in obtaining capital funding. Sections 2.1 and 2.2 above provide statistics showing the large number of businesses owned by minorities, women and veterans that are assisted through the 7(a) and 504 Programs. In addition, as also discussed in those sections and in Section 3.9 above, both programs have led to the creation of hundreds of thousands of new job opportunities on an annual basis.

Thus, no adverse cumulative impacts related to demographics and environmental justice have been identified.

B. Traffic and Urban Sprawl.

Certain environmental organizations brought suit against SBA claiming that its small business loan assistance programs contributed to urban sprawl in the Washington, DC metropolitan area. As a result, SBA, as part of this PEA, engaged the services of URS Corporation (URS) to perform an analysis in order to determine if there is any connection between the issuance of SBA guarantees in connection with loans to small businesses and urban sprawl. URS, an international corporation, has broad experience and expertise in a number of areas needed for this analysis, including statistical analysis, urban and transportation planning, and environmental impact assessments.

URS' analysis, which is attached as Appendix B, includes a review of a wide range of studies focusing upon the definitions, characteristics, and causes of urban sprawl, as well as studies that analyzed determinants of business location and employment patterns. The analysis considered the role of the Federal Government in local land use policy. In furtherance of the study, a mapping and statistical analysis was conducted to help determine if SBA-guaranteed loans in the Washington, D.C. metropolitan area are a causal factor leading to urban sprawl.

While the URS analysis found some disagreement on a precise definition of urban sprawl, it also found that urban sprawl has, generally, been used to describe unplanned and unsightly suburban expansion resulting in low density, discontinuous, automobile-dependent, new development that separates where people live from where they work.

The URS study found that the types of businesses supported by SBA-guaranteed loans generally follow in the wake of, and do not lead, new development, in order to serve the new population and to employ the relocated labor force. As population grows in the suburbs, the number of suburban grocery stores, dry cleaners, and gas stations grow as well. Unlike large retail stores, small businesses, such as SBA-guaranteed loan recipients, would not be generally considered as "destination points." As a result, many small businesses are clustered in suburbs along major transportation corridors, in existing large shopping malls or in smaller existing strip commercial centers.

However, while a specific business location is left to the company, local zoning laws have a definitive effect on site selection. In considering the role of the Federal government in land use decisions, the URS analysis noted that the delegation of powers in the Federal system generally serves to limit Federal government involvement with certain local land use issues such as zoning. Moreover, as noted in the URS report, a recent Government Accounting Office (GAO) study on the connection between the Federal government and urban sprawl found that only anecdotal evidence exists to confirm a connection between Federal actions and sprawl.

The statistical analysis that URS conducted found only a very weak correlation between SBA-guaranteed loans and development patterns. Three variables representing sprawl (population density, distance to the nearest major road, and change in the unemployment rate) were found to be only weakly correlated with the number of SBA-guaranteed loans in the D.C. metropolitan area. A fourth variable, distance to an urban center, was not found to be correlated at all with the number of SBA-guaranteed loans. The fact that the statistical analysis demonstrated such a weak connection between SBA-guaranteed loans and the variables for sprawl indicates that such loans are not responsible for development patterns. It should be noted that even if a statistically significant correlation had been found by the analysis, that would not necessarily indicate a causal link between urban sprawl and SBA-guaranteed loans. In any case, a review of available studies and the statistical analysis performed by URS indicate that there is no readily apparent connection between SBA-guaranteed loans and the promotion of urban sprawl. (See Appendix B.)

Nor is construction funded by SBA-guaranteed loans anticipated to have substantial impacts upon traffic patterns and roads. As discussed in Section 2.6, based upon available data, less than 3.75% of all SBA-guaranteed loans are used to fund significant new construction in excess of $300,000. And while such guaranteed loans may involve some degree of road closure and traffic diversion during construction, these impacts are short-term and minor. Given the small-scale of the business activities of the vast majority of SBA-guaranteed loan recipients, business operations are not anticipated to greatly increase the amount of traffic in a project area or create the need for substantial increases in parking availability. For projects that may impact traffic, local permitting agencies would typically require a traffic study to evaluate traffic patterns and recommend approaches for handling traffic issues during business construction and operation.

C. <u>Zoning and Land Use</u>.

Many jurisdictions throughout the country are guided by comprehensive plans that specify the types and locations of growth expected in the future. In most cases these plans are developed through a public participation process and approved by publicly elected officials such that the plans reflect local values and attitudes towards planning and future development. Zoning ordinances and subdivision regulations implement the public will by setting forth in law the decisions made in the planning process. Such ordinances and regulations, primarily set at the city, county, or regional level, vary throughout the nation.

SBA has determined that the cumulative effects of its small business loan assistance programs on zoning and land use are negligible in large part because small businesses are primarily located in areas that local decision-making bodies have zoned for commercial activity and which are contiguous to developed land. Zoning restrictions prohibit the development of businesses in areas that are not zoned commercial or industrial. As discussed in Section 2.6, available data indicates that less than 3.75% of all SBA-guaranteed loans are used to fund significant new construction in excess of $300,000. SBA believes that, given the scale of operations of SBA-guaranteed loan recipients, the effect of new facility construction on land use and zoning is minimal. As discussed above in section 2.6, applicants for SBA-guaranteed loans are required to obtain all necessary construction permits, and, pursuant to the permitting process, local authorities typically ensure that no substantial changes in land use or substantial deviations from approved comprehensive plans would occur.

SECTION 4 CONCLUSION

Based on the foregoing analysis, SBA has determined that the cumulative effects of construction and business operations funded by 7(a) and 504 loans do not have a significant impact on the components of the environment that CEQ has identified as generally relevant to cumulative studies. Moreover, the dollar amount of individual SBA-guaranteed loans is relatively low, and the number of borrowers that might undertake significant construction or engage in business operations that might lead to significant effects upon the environment in some way has been determined to constitute only a minute fraction of the overall programs. Further, because SBA-guaranteed loans only fund construction if the applicant has obtained all necessary construction permits, there are existing and, generally comprehensive, federal, state and local permitting and regulatory programs in place that address the potential effects of construction upon the environment. Similarly, there are existing regulatory and permitting schemes to address effects arising from the day-to-day operations of small businesses that receive a loan with SBA assistance.