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S. Philip Malspies

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PUBLIC CAPITALIZATION OF NEW BUSINESS*

S. PHILIP MALSPIES **

Evaluation

The evidence presented as to loan policy, terms and conditions leads the author to conclude that credit from the Small Business Administration, as a public source of capital, is not available to new business, as defined in this paper. This is true although new business is, by its definition, within the scope of SBA activities. The following evaluation of statutory

In 10 Miami L.Q. 1 (1955) we printed excerpts from the article as indicated (†) in the following table of contents. In this issue of Volume 10 we are printing the sections designated (††). This portion of the article reflects legislative and administrative changes to June, 1955.

The SBA has announced a new Limited Loan Participation Plan. The purpose of this plan is to provide financial aid for small concerns which have very little in the way of collateral with which to secure loans. Under this plan the SBA participates with banks to a maximum of 75% of the total amount of the loan or \$15,000, whichever is the lesser. These loans are made for a maximum period of five years with interest fixed at not more than 6% per annum.

Security for these loans may include, but are not limited to, real and personal mortgages, accounts receivable, warehouse receipts, negative pledge agreements, corporation guarantees and personal endorsements. The latter indicates that collateral for such a loan may not be necessary. The bank is the sole determiner of the sufficiency and adequacy of collateral. Additional requirements are that the borrowing firms have a good earning record, competent management and a credible record with local banks.

It would appear that this new Limited Loan Participation Plan serves a useful purpose in bringing within its scope of SBA activity a great many small firms which cannot satisfy commercial collateral requirements. However, it should also be noted that a five year loan is in fact a short term loan and therefore could not be used as equity capital, and further that credit requirements would exclude almost all new business, as herein defined, from the operation of this plan. See SBA LIMITED LOAN PARTICIPATION PLAN, Washington, Government Printing Office, 1955.

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and administrative credit policy demonstrates the failure of SBA to furnish a solution to the capital problems of new business.

The statutory definition of small business and the administrative interpretation thereof includes within its scope new business as defined within the Act as "one which is independently owned and operated and which is not dominant in its field of operation."¹⁰³ Administrative regulation interpreting this definition includes as small business ninety-five per cent of all business concerns in the United States.¹⁰⁴ Under the concept of new business used for the purpose of this discussion, a new business is small in the sense of independent ownership and non-dominance in its field of operation.

Statutory loan policy excludes from the scope of SBA lending activity new business as herein defined. The loan policy laid down by the 83rd Congress in the "Small Business Act of 1953" is essentially composed of three major factors. First, loans may be made only for working capital to small businesses engaged in defense production, essential civilian production or necessary to a well balanced national economy.¹⁰⁵ This factor does not prohibit access by new business to SBA credit facilities. New business as herein defined may be of any kind and nature as could possibly be engaged in essential civilian production or be necessary to a well balanced national economy, as those terms are interpreted by SBA.

Second, financial aid may not be granted unless it is ". . . otherwise unavailable on reasonable terms"¹⁰⁶ and loans must be of ". . . such sound value or so secured as reasonably to assure repayment."¹⁰⁷ These requirements appear to be contradictory. If an applicant has sufficient collateral to secure his loan from SBA under the above terms, it would seem that he should have sufficient collateral to obtain financing from a private financial institution. The solution to this apparent contradiction hinges on the phrase "unavailable on reasonable terms." Although a small business applicant may have sufficient collateral with which to secure a private loan, he may not be able to obtain a loan at six per cent interest, or for a maturity period of ten years.¹⁰⁸ Private loans may impose burdensome grace periods, acceleration or anticipation clauses. If a loan is available to an applicant, but on terms *less* reasonable than those of SBA, he may receive an SBA loan.

Despite this availability of credit to small business, generally where terms as reasonable as those of SBA cannot be obtained, the security

103. Act of July 30, 1953, c. 282, Title II § 203, 67 STAT. 233, 15 U.S.C. 632 (1952 Supp.).

104. SBA 2nd Semi-Annual Report 11.

105. Act of July 30, 1953, c. 282, Title II § 207, 67 STAT. 235, 15 U.S.C. 636(a) (1952 Supp.); Release No. 39, Nov. 16, 1953 mimeographed.

106. *Ibid.*

107. *Ibid.*

108. Act of July 30, 1953, c. 282, Title II § 203, 67 STAT. 235, 15 U.S.C. 636 (a)(1) (1952 Supp.).

requirements of the Act exclude that segment of small business which is termed new business in this paper. The language ". . . of such sound value or so secured as to reasonably assure repayment" is not an innovation of the 83rd Congress. This language appeared in loan policy statements of RFC,¹⁰⁹ Smaller War Plants Corporation¹¹⁰ and Small Defense Plants Administration.¹¹¹ Under those agencies it was often interpreted to mean security of an equal value, dollar for dollar. It cannot be validly inferred that Congress was unaware of this interpretation. It must be inferred that the above clause was enacted by Congress with the understanding that it would be so interpreted. Since new business, as defined herein, is chiefly characterized by its youngness or immaturity, the view is taken that it will not be able to satisfy this stringent security requirement, and SBA credit is therefore inaccessible. This conclusion is also supported by the following evaluation of administrative loan policy.

The most significant features of SBA administrative loan policy are the so-called "common sense" credit requirements,¹¹² under which an applicant must qualify for financial assistance. These requirements compel the conclusion that new business, as defined herein, cannot qualify for loan assistance. Under these conditions SBA requires a five year earning record and business history, save in exceptional cases. Businesses in operation less than two years are not considered at all. These terms exclude new business. This automatic exclusion was apparent to SBA and, in order to soften the blow, it provided that businesses in operation three or four years could qualify for loan assistance, if they could meet stringent collateral requirements. They would be required to match the amount of the loan dollar for dollar, with collateral. They would have to pass credit requirements as strict or usually more strict than those of a commercial bank.¹¹³ Since new business, as defined for the purpose of this discussion, is characterized by financial immaturity, it could not qualify under the credit terms of a commercial bank. It therefore could not qualify under SBA administrative loan policy.

The picture painted here of SBA is very black. This is misleading if the reader loses sight of the writer's approach. The conclusion is reached that SBA does not fill the new business capitalization gap. It does not follow that SBA is a worthless agency. SBA has made great strides in closing the financial gap for small, well established businesses.

109. Act of June 30, 1947, c. 166, Title I § 1, 61 STAT. 202, 15 U.S.C. 604 (a)(1) (1952).

110. Act of June 11, 1942, c. 404, Title II § 4, 56 STAT. 353, 50 U.S.C. 1104 (1952).

111. Act of Sept. 8, 1950 c. 932, Title VII § 713, 64 STAT. 821, 50 U.S.C. App. 2163 (b) (1952).

112. SBA. PUBLIC STATEMENT OF LOAN POLICY, Dec. 21, 1953, mimeographed, p. 3.

113. Personal interview, Mr. Bernard E. Boldin, Acting Branch Manager, Miami Field Office, Small Business Administration, Pacific Building, Miami, Florida.

Its lending activity is but one function among many. Many of its other activities are available to and are of great help to new business.¹¹⁴ The author has found no ground to justify the conclusion that the Small Business Act of 1953 should be allowed to lapse.¹¹⁵

Administrative Procedures

Before making application for a loan the borrower or his attorney is well advised to prepare the material herein described. This material should be compiled on separate sheets of paper so that correction can easily be made by substitution of a single sheet rather than by re-typing the entire file. Prehand preparation of information required to be submitted will go a long way toward expediting the granting of the loan.¹¹⁶

In the deferred participation type of loan, application to SBA is made by the bank. The borrower has no direct contact with SBA. The information, which is generally supplied in this type of loan to SBA, is instead referred to the bank as a general file or on bank application forms.¹¹⁷ Since procedure as to application and information will vary with each bank according to its own policy, it is possible to describe here only those common requirements required by every bank.

The borrower must furnish the bank with a balance sheet, not less than sixty days old, and of the most recent date possible. They must be provided also with an earning statement for at least three full years immediately prior to the application, including the current year, to the date of the balance sheet. This statement together with the balance sheet should show the following information. They must indicate when the fiscal year ends. If assets are pledged to secure outstanding indebtedness, they must be fully described, and the persons to whom such assets are pledged must be set forth with particularity. Unpaid taxes, local or federal, and other indebtedness for which collateral is not pledged, but which constitute liens, potential or actual, must be fully described. In addition to normal or regular balance sheet items with which any accountant is familiar, there should be separately set forth amounts due from or to subsidiaries, officers, employees or relatives, net sales, cost of sales, gross profits, officers' salaries, all expenses, depreciation, other income or deductions, federal and state income taxes and net profits after all charges and dividends are paid.¹¹⁸ It is recommended that these papers, and others of a similar

114. For example, managerial and technical assistance, products assistance and production assistance, S.B.A. 2ND SEMI-ANNUAL REPORT, *op. cit.* *Supra* note 104 at 69:95.

115. This statement was made in January, 1954 prior to the expiration date of June 30, 1955, set in the Small Business Act of 1953, Act of July 30, 1953, c. 282, Title II § 221, 67 STAT. 240, 15 U.S.C. 650 (1952 Supp.). The SBA was subsequently extended, first for one month by the Act of June 30, 1955, c. 251 § 4, 69 STAT. 225 (1955), and then for an additional 2 year period (until July 31, 1957) by the Act of August 9, 1955, c. 628 § 13 69 STAT. 551 (1955).

116. See note 113 *supra*.

117. SBA *Explanation of Loan Procedures*, Feb. 25, 1954, mimeographed, p. 5.

118. SBA, FORM 6.

nature which may be required, be prepared by a certified public accountant. The expenditure will be insignificant in relation to the expense saved by avoiding error and delay.

The borrower must prepare also a schedule of collateral, described in reasonable detail and showing cost and net book value separately of land, buildings, machinery and equipment.¹¹⁹ The bank on the basis of this information makes a valuation and submits it with its application to SBA. In most instances SBA will not require an independent appraisal of collateral.¹²⁰ The borrower's salary schedule must set forth the amount of compensation paid to each employee where such compensation exceeds \$7,500 as to any employee. If the applicant is a corporation, the salary schedule must show the compensation, regardless of the amount, paid to officers, directors and members of its management group, and the financial interest of each in the corporation. If the applicant is a partnership, it is necessary to describe, in detail, compensation, including bonuses and commissions, paid to or being withdrawn by each partner for his personal use. Individual applicants must indicate amounts withdrawn for personal use or paid to relatives.¹²¹

The borrower must prepare a statement setting forth the complete history, background and experience of his firm.¹²² This is comparable to the history and experience information required to be furnished to SEC. A general idea of the information included in such a history may be obtained from any prospectus or offering circular.¹²³ In addition it will usually be necessary to furnish the bank with at least two guarantors. It is good practice to furnish prospective guarantors with a copy of the business history, balance sheet and earning statements.

The papers described, together with others as may be required by the bank, are submitted to the bank and appraised by it. If the applicant is found worthy, the bank fills in the application and submits the entire file to SBA for approval.¹²⁴ For this reason no less than five copies of these papers should be prepared. The bank will retain the original, the borrower should retain one copy and three copies must be forwarded to SBA. On the application form itself, the bank certifies that without SBA participation the bank and its corresponding banks would be unwilling to make the loan and that financial assistance is not otherwise available to the borrower on reasonable terms. If SBA approval is obtained, the bank and SBA enter into a deferred participation agreement, and the bank

119. *Ibid.*

120. Boldin, *op. cit. supra* at 113.

121. *Op. cit. supra* note 118.

122. *Ibid.*

123. See Malspies, PUBLIC AND QUASI PUBLIC CAPITALIZATION OF NEW BUSINESS, Appendix F (unpublished thesis in University of Miami Reference Library 1955).

124. Boldin, *op. cit. supra* note 113.

closes the loan of the applicant in accordance with its own policy and under its usual loan agreement forms.¹²⁵

Applications for immediate participation for direct loans are made directly to SBA on SBA Form 4. SBA Form 4A contains instructions for filling in Form 4. In connection therewith Form 4A states that "it is not required that an applicant employ an attorney or agent in order to file an application with this agency." That is, it is not required in the sense that it is not required that a taxpayer employ an attorney to fill in an income tax form. However, it is very desirable for the applicant to employ an attorney to file with SBA. Should the applicant not desire to employ an attorney, SBA officials will render assistance in filing. However, the preparation of the file for application for SBA is extremely complex and requires the services of an attorney and a certified public accountant. In many instances collateral will be either land or a first mortgage on machinery and equipment. There will be title searches to be made, subordination agreements to be drawn, accounts to be rendered, mortgages to be drawn and a closing to be transacted. These transactions will require the services of an attorney and an accountant, and the additional expenditure incurred in having the attorney prepare the file will be money wisely spent.

The following procedure, from first interview to time of closing, although by no means the only method of preparing an application, is recommended, and of course, may be varied to fit individual office pattern and procedure.¹²⁶ When the client enters the attorney's office with a view to applying for an SBA loan or merely with a hope of finding some method of obtaining funds and the attorney recommends SBA, the attorney should take a positive approach. The "I will look into it" approach is costly to both client and attorney since it will require a considerable number of conferences which are time consuming and for which the attorney rarely receives extra compensation. The attorney should make a preliminary explanation of SBA to his client. Pointed questions should be asked of the client to determine whether his business is within the SBA definition of small business and whether his business or the type of loan he seeks is exempted under the SBA rule of exclusion. The initial conference should be dedicated also to determining at first blush whether the client will be able to satisfy the six "common sense" requirements.

125. A list of these closing forms as to nature and number appears in Appendix E, *id.* The author was unable to obtain approval from the SBA to reprint these forms in this article.

126. This information as to methods of office procedure in handling SBA loan applications represents the author's opinion based upon analysis of SBA application forms, loan procedure, and information obtained at the U. S. Small Business Administration, Miami Field Office, Pacific Building, Miami, Florida, where, step by step, the author went through, under guidance of Bernard E. Boldin, Acting Branch Manager of the Miami Field Office, the actual making of an application for a small business loan.

If it appears that the client can qualify for SBA assistance and desires to make application, he should be handed the following check list or one substantially similar. The use of such a check list serves a three-fold function. First, it eliminates many unnecessary conferences. It certainly will not eliminate all conferences as it is not expected that a client will supply all the information the first time. Second, it provides the attorney with the information obtainable in no other way. An examination of books and records will not provide the attorney with information as to character, business or personal experience. Third, it tests the client's true intention. If the client is merely toying with the idea of applying to SBA and does not seriously intend to actually obtain a loan, he will not invest time nor money for financial statements. The client, sincere in his desire to obtain SBA assistance, will not be discouraged. He will supply the necessary information as quickly as possible in order to facilitate granting of the loan. The not-so-sincere client who is motivated more by curiosity than by need will be required to take a positive stand before the attorney has invested many hours of work.

The items in the following check list must be filled out in as much detail as possible, omitting nothing. Each item should be prepared on a separate sheet of paper. This information, if properly compiled and promptly submitted will speed the application and enable the applicant to secure a loan more speedily.

1. Set forth your complete personal history. Indicate what schooling you have received, what business experience you have, all facts concerning your personal credit, and all facts good or bad as to your character, such as whether you have been convicted of a crime or have been in bankruptcy.
2. Set forth a complete business history of your present business. Indicate the nature of your business, what you produce or sell, whether the business has changed its name, who the principal owners are and what success the business has achieved.
3. Submit your books, reports and records.
4. State the amount of personal and business income tax you have paid each year for the past five years.
5. State the names of at least three possible guarantors who will give surety that you will pay the loan.
6. Make a short statement of the reasons you seek this loan. For example, to build a new plant or buy new machinery. Set forth exactly what the money will be spent for and if for more than one item, the amount that will be spent for each.
7. Make a short statement indicating how you intend to repay this loan. State how much earnings you derive from your business and other interests, what personal debt and expenses you have and how much you need to support yourself and dependents.

8. List all your employees, what their jobs are, whether they work seasonally or all year round and how much each earns.
9. Submit copies of all existing leases and contracts.
10. Have your accountant prepare an analysis of the present and future operations of your business with a projection of earnings. Have him prepare also a balance sheet not less than 60 days old and an earning statement for the past three years. Ask him to prepare a complete financial statement for you and submit these papers to yourself.¹²⁷

When the information and materials required by the check list have been supplied by the client, they may then be analyzed and digested. The items of information required to be submitted to the bank should be typewritten on an original and four copies. Each item should be set out on a separate sheet of paper. While this is being processed, a local bank should be requested to forward its application forms and indicate what additional information will be required. These forms will usually require the signature of the applicant. The application and information should be made into a file which could contain a table of contents and an index. This file should be forwarded to the bank, accompanied with a letter requesting consideration of the applicant for a deferred participation loan or, if unavailable, an immediate participation loan. This letter should request also that if the bank, after due consideration, determines that it cannot make available to the applicant a participation loan, that it return the file together with a letter indicating that it cannot make such a loan and, if possible, indicating that its corresponding banks are also unwilling to make the loan.¹²⁸

If the bank is willing to make a deferred participation loan it will then process the application with SBA. The attorney will have to prepare for the closing by preparing title searches, mortgage instruments and closing statements. This is conventional mortgage loan practice. If the bank is willing to make an immediate participation loan, the attorney must then fill in SBA Form 4 in accordance with the instructions contained in SBA Form 4A and submit the application, together with three copies of the required supplemental information, to the SBA field office. This must also be done if the bank refuses a participation loan. In this instance, however, Form 4 must indicate that a direct loan is sought, and the all-important letter of refusal from the bank must be attached.

Where a direct loan or immediate participation loan application is made, on receipt of the application and supplemental application at the branch office, a financial specialist makes a desk analysis. This is done for two primary purposes. First, to determine whether the application

127. This check list was prepared by the author, based upon an analysis of SBA Forms 4 and 4A and upon an analysis of actual loan application procedure.

128. SBA, Release No. 49, Dec. 7, 1953, mimeographed.

is complete, and second, to assess whether on the face of the application there is anything which would prevent the applicant from receiving the loan. Usually the financial specialist will find some omission and will call, followed by a letter, asking you to supply the required information. The next step is a field trip to the plant itself where the specialist observes actual plant operation and examines the books. He will often suggest improved methods of operation and make other valuable suggestions to the applicant. The specialist then makes a report which is typed upon a stencil and forwarded to the regional office. There the regional director reviews the file and passes on the loan. Recently regional directors were given authority to authorize loans not in excess of \$50,000, provided there is twenty-five per cent participation, one half of which is new money. If the loan is of this type, the regional director may authorize the loan and make arrangements through the branch office to enter into the necessary arrangements with the bank. If the loan is beyond the regional director's authority, he makes a report based upon the financial specialist's file and report, and forwards twenty-two copies of this report to the Washington office. In Washington the file is reviewed by a staff of credit men who report on same and submit the file and report to the Loan Review Committee. This committee reviews the file and makes their report recommending a course of action to the administrator who takes final action on all loans. If the administrator approves the loan, the Regional Office is notified and a formal loan authorization is prepared and forwarded to the applicant. This is similar to a bank commitment letter. It sets out the conditions under which SBA will make the loan. When the borrower is ready, a closing date is set. At the closing, the loan authorization is accepted by the borrower and becomes a contract. The closing proceeds as any mortgage loan closing, except that there are many forms to be signed by the borrower.¹²⁹

Accomplishments

SBA as a governmental agency is yet in its infancy, and therefore its record of loans made and applications received is not completely indicative of its probable success in its operative field.¹³⁰ It must be borne in mind that the field of SBA endeavor and operation is extremely broad, and, for this reason, the worth of the agency cannot be judged purely on a statistical record. The following are some of the activities of SBA which are not within the scope of this paper, but in which SBA is aiding small

129. Boldin, *op. cit. supra* note 113.

130. The SBA was created under the Small Business Act of 1953, Act of July 30, 1953, c. 282, Title II § 221, 67 STAT. 240, 15 U.S.C. 649 (1946), which was scheduled to expire on June 30, 1955, but was renewed for one month and subsequently for two years (until July 31, 1957) by Act of June 30, 1955, c. 251, Title II § 4, 69 STAT. 225 (1955), and by Act of August 9, 1955, c. 628, Title II § 23, 69 STAT. 551 (1955). By comparison with the R.F.C., the only equivalent federal agency, the SBA is still in the testing state.

business and doing a good job. SBA undertakes to counsel and assist small business in selling to the government. Prime contracts are obtained for small business, and by subcontracts, aid is given to both small business and the defense effort. Various programs have been set up with other agencies, such as the General Service Administration, the Foreign Operations Administration and the Atomic Energy Commission. SBA has also done considerable work in specification assistance. One of SBA's greatest aids to small business is in the form of management aids which are prepared for SBA and the Department of Commerce and are issued in conjunction with each other. Other projects are materials and equipment assistance, a tax amortization program, the formulation of production pools, the making of a facilities inventory and educational functions for small business.¹³¹

This article is concerned primarily with financial aid to new business. Bearing in mind that an analysis of accomplishments at this early stage has only probative value, nevertheless such an analysis is of value, since from it we may perhaps be able to foresee what the trend will be. Such figures and their accompanying analysis also aid the applicant in determining prehand what the possibility is of SBA assistance.

Financial assistance by SBA is actually of two types. Each has equal importance. The first is that of financial counselling. The primary objective of SBA is to guide the small businessman so that he may make better use of the private or normal channels of finance.

In financial counselling, consideration is given by financial specialists of SBA to the possible means of obtaining private credit on reasonable terms, obtaining assistance from local development credit corporations, aspects of improved financial management, means of increasing equity financing and eligibility for V loans on defense contracts. SBA has undertaken in one case to find a small business into which an applicant might enter where the applicant came to SBA with money and a desire to go into business.¹³²

SBA receives an average of 5,000 calls a month for loan assistance and financial counselling. SBA often through its specialists will undertake to review a financial set up and redraft it in such a way that private institutions will consider the business a sound loan prospect.¹³³

All of these activities and many others are providing answers to age old problems of the small businessman. Most interesting is the fact that almost all of these activities and benefits are available to new business. The struggle to bring aid to small business being far from

131. SBA 1st SEMI-ANNUAL REPORT, Washington, Government Printing Office, 75-92; S.B.A., 2nd SEMI-ANNUAL REPORT, *op. cit. supra* note 104, at 53-95; SBA, 4th SEMI-ANNUAL REPORT, Washington, Government Printing Office, 37-73.

132. 2nd SEMI-ANNUAL REPORT, *op. cit. supra* note 104, at 36-37, examples cited.

133. *Id.* at 35.

over, any step in the direction of affording such aid to new business is certainly welcome. The policies adopted by the administrator of SBA are so liberal that many of these benefits are available also to business in the idea stage.

On the other hand, the box score indicates that direct financial aid is not available to new business and is, of course, not available to idea business. As of June 30, 1955, a total of 5,607 applications requesting loans in the amount of \$315,764,905 were received by SBA.¹³⁴ Of these, 4,202 applications were processed and forwarded to the Washington office, involving a total of \$244,777,946. The Washington office acted upon 4,176 applications requesting a total of \$242,426,244, and the remainder was still pending. 546 applications for direct loans were approved, yielding a total of \$23,560,167 or an approximate average of \$43,607 per loan, 1,099 participation loans were granted totaling \$60,153,346, or an approximate average loan of \$54,635. The average loan determined on the basis of all loans was approximately \$50,880.¹³⁵

Since this article is written to determine whether SBA provides funds to new business, the accompanying tables are of great interest.¹³⁶ Table I

134. SBA, 4th SEMI-ANNUAL REPORT, *op. cit. supra* note 131 at 46.

135. *Ibid.*

136. SBA, 4th SEMI-ANNUAL REPORT, *op. cit. supra* note 131, at 49-50.

TABLE I
REASONS FOR DECLINING BUSINESS
LOAN APPLICATIONS

January 1 through June 30, 1955

Reasons	Applications Declined	
	Number	Percent of Total
Total applications declined.....	867	
Total reasons*	1,857	100.0
Earning ability not demonstrated or assured for future.....	744	40.0
Insufficient collateral.....	409	22.0
Insufficient equity investment (including disproportionate debt-net worth ratio).....	245	13.2
Need for Small Business Administration funds not demonstrated	133	7.2
Unsatisfactory financial condition.....	221	11.9
Not eligible.....	42	2.3
Other	63	3.4

*Total number of reasons is in excess of number of applications declined because in most instances two or more reasons for declination were given.

TABLE II
BUSINESS LOANS APPROVED—BY SIZE OF LOAN
Cumulative Through June 30, 1955

Size of Loan	Number Approved	Percent Of Total	Gross Amount Approved	Percent of Total
Total	1,645	100.0	\$83,713,513	100.0
\$ 5,000 and under	63	3.8	253,107	0.3
5,001 to \$ 10,000	162	9.9	1,421,825	1.7
10,001 to 25 000	404	24.6	7,520,705	9.0
25,001 to 50,000	476	28.9	19,280,652	23.0
50,001 to 100,000	342	20.8	27,077,578	32.4

indicates that, in a sample period from January 1, 1955, to June 30, 1955, eighty-seven and one tenth per cent of loans declined by SBA were so declined because of the financial immaturity or unseasonedness of the applicant; *i.e.*, because they were new businesses as herein defined. It is clear that SBA practice has been not to make loans to new business. There is no indication here of any trend in the opposite direction.

Statistics very rarely yield an accurate picture, since they do not describe particular instances but rather general trends. It is probably inaccurate to state that no loans have been made to new business, as defined herein, without knowing the complete business history of every business whose application has been approved. It is reasonable to conclude, however, on the basis on the evidence presented¹³⁷ that new business, as defined herein, is not the prime target of SBA and that financial assistance to such business will occur incidentally rather than intentionally.

SUMMARY OF CONCLUSIONS

The small business problem is not a new one. Nor is it a single problem. It has many facets. Probably the cause of most small business failures can be ascribed to either lack of available credit or capital, inefficient management and loss of retained earnings and, therefore, growth power, through taxation. There are other causes, such as poor health, family break-ups, poor timing, overly competitive fields and many others, but these are individual factors rather than general ones.¹³⁸

More has been done on both the state and federal levels in the past five years to alleviate the causes of small business failures than was done in the prior fifty year period. No panacea has been devised. None is sought. This is clearly demonstrated by the following statement issued by SBA:

In the first place, although we are the champion of small business, it goes without saying that we cannot and should not seek to underwrite the success of all small businesses. True, we must keep open wide the doors of opportunity so that we, as a country, can continue to profit from the ingenuity, industry and inventive genius that have produced our economy of abundance. However, free ingress into the business world does not necessarily constitute any open sesame to success. It would appear from statistics that many are foredoomed to failure, or at least retirement from the lists voluntarily or involuntarily after a few jousts in the economic arena. . . . We do not believe that it was the intention of Congress, nor do we propose to underwrite incompetence, or lend money to stave off inevitable failures. Free ingress conversely implies free egress.¹³⁹

137. Table II, *ibid.*

138. SBA, 1st SEMI-ANNUAL REPORT, *op. cit. supra* note 131, at 11.

139. *Id.* at 4.

These great strides made by SBA have left two major gaps in the network of capital aid to small business. These are first, the complete lack of any provision for the furnishing of equity capital so desperately needed by small business, and second, the failure of the programs to extend the scope of their activities to new business.

The State Development Credit Corporations are private organizations which operate on a state-wide level, with the express sanction of the state, obtained through special charters. They are organized and managed by men and women who represent the private financial institutions in the state. They operate by pooling surplus funds from private financial institutions throughout the state and lending those funds to business. Their failure to provide equity capital and funds for new businesses is apparently due to two factors: first, a carry-over of conservative private financial policy to the new organization, and second, their comparative infancy and desire to demonstrate the soundness of their operation in order to win popular support. These institutions, together with comparative institutions, and on a more local level, the community industrial corporations, represent the greatest potential for providing capital to small firms. They have available the greatest source of capital, unburdened by the disadvantages of using taxpayer funds and not subject to the uncertainties of politics. This source of capital is local, convenient and unhampered by governmental red tape. Since they do not seek competition with the private interests of their managers, but rather indirectly foster those interests, continued support of private financial institutions is certain. They have received federal recognition, and every effort is being made on the federal level to encourage the further development of these corporations.¹⁴⁰ These organizations will unquestionably become in time a major supplier of equity capital to small business. They have already turned their eyes toward new business and in a very few years will be a predominant source of capital for those concerned. Every state should and probably will have such an organization.¹⁴¹

SBA is the latest in a series of federal agencies designed to aid small business. It is the first such agency dedicated to peacetime aid to small business. The scope of this agency is so broad in its many functions that it cannot be evaluated on the basis of one activity. Despite its relevant infancy it has accomplished much. It has tackled the small business problem from every angle. Its greatest accomplishments are undoubtedly the providing of management advice and financial counselling to small

140. SBA 2ND SEMI-ANNUAL REPORT, *op. cit. supra* note 104, at 33; SBA, DEVELOPMENT CREDIT CORPORATIONS, 1953, mimeographed, p. 5.

141. The following states now have under consideration proposals to enact such corporations: Louisiana, Michigan, Nevada, Indiana and Utah. SBA, 1st SEMI-ANNUAL REPORT, *op. cit. supra* note 131 at 74. In addition the Delaware State Development Department appears to be considering such a corporation. "Advertisement," *The Wall Street Journal*, January 15, 1955, p. 6, col. 3.

business. SBA has little potential as a supplier of equity capital in the future. It is hampered by Congressional regulation and restriction, and further liberalization of the act seems unlikely. If it continues under its present policy, limited direct financial aid will eventually be available to new business. Its policy of avoiding competition with private interests and encouraging the growth of state and local capital-supplying organizations indicates that its administrators seek to provide a stopgap for the many deficiencies which exist today, while developing a system of private interests to anticipate those deficiencies of tomorrow. As such, it is a beneficial and a most welcome federal agency.