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Title 15. Commerce and Trade

[Chapter 14A. Aid to Small Business \(Refs & Annos\)](#)

→→ § 634. General powers

(a) Seal; appointment and compensation of personnel; use of other services and facilities

The Administration shall have power to adopt, alter, and use a seal, which shall be judicially noticed. The Administrator is authorized, subject to the civil service and classification laws, to select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as shall be necessary to carry out the provisions of this chapter; to define their authority and duties; and to pay the costs of qualification of certain of them as notaries public. The Administration, with the consent of any board, commission, independent establishment, or executive department of the Government, may avail itself on a reimbursable or nonreimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this chapter.

(b) Powers of Administrator

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator may--

(1) sue and be sued in any court of record of a State having general jurisdiction, or in any United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property;

(2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this chapter, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any

real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this chapter;

(4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. [Section 6101 of Title 41](#) shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this chapter if the premium therefor or the amount thereof does not exceed \$1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this chapter may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint;

(5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in [sections 636\(a\)](#) and [636\(b\)](#) of this title;

(6) make such rules and regulations as he deems necessary to carry out the authority vested in him by or pursuant to this chapter;

(7) in addition to any powers, functions, privileges and immunities otherwise vested in him, take any and all actions (including the procurement of the services of attorneys by contract in any office where an attorney or attorneys are not or cannot be economically employed full time to render such services) when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this chapter: *Provided*, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation;

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in [section 636\(b\)](#) of this title from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment: *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities;

(9) accept the services and facilities of Federal, State, and local agencies and groups, both public and private,

and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of [section 636\(b\)](#) of this title;

(10) upon purchase by the Administration of any deferred participation entered into under [section 636](#) of this title, continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness;

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or refusal to obey a subpoena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found;

(12) impose, retain, and use only those fees which are specifically authorized by law or which are in effect on September 30, 1994, and in the amounts and at the rates in effect on such date, except that the Administrator may, subject to approval in appropriations Acts, impose, retain, and utilize, additional fees--

(A) not to exceed \$100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;

(B) not to exceed \$300 for loan assumptions;

(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 [[15 U.S.C.A. § 681 et seq.](#)] for which the applicant requests a commitment from the Administration for funding during the following year; and

(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administration under the authority of this chapter and the Small Business In-

vestment Act of 1958 [[15 U.S.C.A. § 661 et seq.](#)];

(13) collect, retain and utilize, subject to approval in appropriations Acts, any amounts collected by fiscal transfer agents and not used by such agent as payment of the cost of loan pooling or debenture servicing operations, except that amounts collected under this paragraph and paragraph (12) shall be utilized solely to facilitate the administration of the program that generated the excess amounts; and

(14) require any lender authorized to make loans under [section 636](#) of this title to pay examination and review fees, which shall be deposited in the account for salaries and expenses of the Administration, and shall be available for the costs of examinations, reviews, and other lender oversight activities.

(c) Procurement of experts and consultants; compensation and expenses

To such extent as he finds necessary to carry out the provisions of this chapter, the Administrator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to [section 6101 of Title 41](#). Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under [section 5332 of Title 5](#), including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by [section 5703 of Title 5](#).

(d) Safety deposit box rentals

[Section 3324\(a\) and \(b\) of Title 31](#) shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

(e) Undertaking or suspension of payment obligation; period; extension of maturity; repayment agreement; "required payments" defined

(1) Subject to the requirements and conditions contained in this subsection, upon application by a small business concern which is the recipient of a loan made under this chapter, the Administration may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administration. While such payments are being made by the Administration pursuant to the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

(2) The Administration may undertake or suspend for a period of not to exceed 5 years any small business concern's obligation under this subsection only if--

- (A) without such undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become insolvent or remain insolvent;
- (B) with the undertaking or suspension of the obligation, the small business concern would, in the sole discretion of the Administration, become or remain a viable small business entity; and
- (C) the small business concern executes an agreement in writing satisfactory to the Administration as provided by paragraph (4).
- (3) Notwithstanding the provisions of [sections 636\(a\)\(4\)\(C\)](#) and [636\(i\)\(1\)](#) of this title, the Administration may extend the maturity of any loan on which the Administration undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.
- (4)(A) Prior to the undertaking or suspension by the Administration of any small business concern's obligation under this subsection, the Administration, consistent with the purposes sought to be achieved herein, shall require the small business concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either--
- (i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period, or
 - (ii) pursuant to a repayment schedule agreed upon by the Administration and the small business concern, or
 - (iii) by a combination of the payments described in clause (i) and clause (ii).
- (B) In addition to requiring the small business concern to execute the agreement described in subparagraph (A), the Administration shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administration deems appropriate in the circumstances, including the provision of such security as the Administration deems necessary or appropriate to insure that the rights and interests of the lender (Small Business Administration or participant) will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.
- (5) The term “required payments” with respect to any loan means payments of principal and interest under the loan.
- (f) Sale of guaranteed portion of loans by lender or subsequent holder; limitations; secondary market
- (1) The guaranteed portion of any loan made pursuant to this chapter may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

(A) prior to the Administration's approval of the sale, or upon any subsequent resale, of any loan guaranteed by the Administration, if the lender certifies that such loan has been properly closed and that the lender has substantially complied with the provisions of the guarantee agreement and the regulations of the Administration, the Administration shall review and approve only materials not previously approved;

(B) all fees due the Administration on a guaranteed loan shall have been paid in full prior to any sale; and

(C) each loan, except each loan made under [section 636\(a\)\(14\)](#) of this title, shall have been fully disbursed to the borrower prior to any sale.

(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under [section 636\(a\)](#) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to [section 636\(a\)](#) of this title, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to [section 636\(a\)\(6\)\(C\)](#) of this title or subsection (e) of this section.

(g) Trust certificates; guarantee of timely payments of principal and interest; full faith and credit of United States; collection of fees; subrogation

(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this chapter, or under [section 696](#) of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on

the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

(3) The full faith and credit of the United States is pledged to the payment of all amounts which may be required to be paid under any guarantee of such trust certificates issued by the Administration or its agent pursuant to this subsection.

(4)(A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) of this section in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration. Any such fee imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under [section 636\(a\)](#) of this title: *Provided*, That such fee shall not be charged to the borrower whose loan is guaranteed: and, *Provided further*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section.

(B) The Administration is authorized to impose and collect, either directly or through a fiscal and transfer agent, a reasonable penalty on late payments of the fee authorized under subparagraph (A) in an amount not to exceed 5 percent of such fee per month plus interest.

(C) The Administration may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under [section 636\(a\)\(23\)](#) of this title. The agent may receive, as compensation for services, any interest earned on the fee while in the control of the agent before the time at which the agent is contractually required to remit the fee to the Administration.

(5)(A) In the event the Administration pays a claim under a guarantee issued under this subsection, it shall be subrogated fully to the rights satisfied by such payment.

(B) No State or local law, and no Federal law, shall preclude or limit the exercise by the Administration of its ownership rights in the portions of loans constituting the trust or pool against which the trust certificates are issued.

(6) If the amount of the guaranteed portion of any loan under [section 636\(a\)](#) of this title is more than \$500,000, the Administrator shall, upon request of a pool assembler, divide the loan guarantee into increments of \$500,000 and 1 increment of any remaining amount less than \$500,000, in order to permit the maximum amount of any loan in a pool to be not more than \$500,000. Only 1 increment of any loan guarantee divided under this paragraph may be included in the same pool. Increments of loan guarantees to different borrowers that are divided under this paragraph may be included in the same pool.

(h) Central registration of loans and trust certificates; contracts with agent; disclosures by sellers of guaranteed portions of loans; regulation of brokers and dealers; electronic registration

(1) Upon the adoption of final rules and regulations, the Administration shall--

(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;

(B) contract with an agent to carry out on behalf of the Administration the central registration functions of this section and the issuance of trust certificates to facilitate pooling. Such agent shall provide a fidelity bond or insurance in such amounts as the Administration determines to be necessary to fully protect the interest of the Government;

(C) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under this chapter and to the purchaser of a trust certificate issued pursuant to subsection (g) of this section, information on the terms, conditions, and yield of such instrument. As used in this paragraph, if the instrument being sold is a loan, the term "seller" does not include (A) an entity which made the loan or (B) any individual or entity which sells three or fewer guaranteed loans per year; and

(D) have the authority to regulate brokers and dealers in guaranteed loans and trust certificates sold pursuant to subsections (f) and (g) of this section.

(2) The agent described in paragraph (1)(B) may be compensated through any of the fees assessed under this section and any interest earned on any funds collected by the agent while such funds are in the control of the agent and before the time at which the agent is contractually required to transfer such funds to the Administration or to the holders of the trust certificates, as appropriate.

(3) Nothing in this subsection shall prohibit the utilization of a book-entry or other electronic form of registration for trust certificates. The Administration may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

CREDIT(S)

(Pub.L. 85-536, § 2[5], July 18, 1958, 72 Stat. 385; Pub.L. 87-305, § 4, Sept. 26, 1961, 75 Stat. 666; Pub.L. 87-367, Title I, § 103(3), Oct. 4, 1961, 75 Stat. 787; Pub.L. 92-310, Title II, § 224(a), June 6, 1972, 86 Stat. 206; Pub.L. 93-386, §§ 3(1), 10, Aug. 23, 1974, 88 Stat. 745, 749; Pub.L. 94-305, Title II, § 208, June 4, 1976, 90 Stat. 671; Pub.L. 95-89, Title III, § 303, Aug. 4, 1977, 91 Stat. 558; Pub.L. 95-510, § 103, Oct. 24, 1978, 92 Stat. 1781; Pub.L. 96-302, Title I, § 114, July 2, 1980, 94 Stat. 838; Pub.L. 98-352, § 2, July 10, 1984, 98 Stat. 329; Pub.L. 100-590, Title I, § 113, Nov. 3, 1988, 102 Stat. 2997; Pub.L. 102-140, Title VI, § 609(a), Oct. 28, 1991, 105 Stat. 825; Pub.L. 102-564, Title III, § 307(d), Oct. 28, 1992, 106 Stat. 4264; Pub.L. 103-81, § 3(a), Aug. 13, 1993, 107 Stat. 780; Pub.L. 103-282, § 2, July 22, 1994, 108 Stat. 1422; Pub.L. 103-403, Title VI, §

602, Oct. 22, 1994, 108 Stat. 4202; [Pub.L. 104-36](#), § 4(b), Oct. 12, 1995, 109 Stat. 297; [Pub.L. 104-208](#), Div. D, Title I, § 103(e), Title II, §§ 205(a), 208(i)(1), Sept. 30, 1996, 110 Stat. 3009-727, 3009-738, 3009-747; [Pub.L. 106-554](#), § 1(a)(9) [Title II, § 209], Dec. 21, 2000, 114 Stat. 2763, 2763A-683); [Pub.L. 108-306](#), § 3, Sept. 24, 2004, 118 Stat. 1131; [Pub.L. 108-447](#), Div. K, Title I, § 131, Dec. 8, 2004, 118 Stat. 3452; [Pub.L. 111-240](#), Title I, § 1117, Sept. 27, 2010, 124 Stat. 2509.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1958 Acts. Senate Report No. 1714 and Conference Report No. 2135, see 1958 U.S. Code Cong. and Adm. News, p. 3071.

1961 Acts. House Report No. 1039 and Conference Report No. 1180, see 1961 U.S. Code Cong. and Adm. News, p. 2993.

House Report No. 1170 and Conference Report No. 1261, see 1961 U.S. Code Cong. and Adm. News, p. 3221.

1972 Acts. [Senate Report No. 92-790](#), see 1972 U.S. Code Cong. and Adm. News, p. 2364.

1974 Acts. [House Report No. 93-1178](#), see 1974 U.S. Code Cong. and Adm. News, p. 4500.

1976 Acts. [Senate Report Nos. 94-420 and 94-501](#), and [House Conference Report No. 94-1115](#), see 1976 U.S. Code Cong. and Adm. News, p. 1166.

1977 Acts. [House Report No. 95-1](#) and [House Conference Report No. 95-535](#), see 1977 U.S. Code Cong. and Adm. News, p. 821.

1978 Acts. [House Report No. 95-1375](#), see 1978 U.S. Code Cong. and Adm. News, p. 3894.

1980 Acts. [Senate Report No. 96-703](#) and [House Conference Report No. 96-1087](#), see 1980 U.S. Code Cong. and Adm. News, p. 2340.

1982 Acts. [House Report No. 97-651](#), see 1982 U.S. Code Cong. and Adm. News, p. 1895.

1984 Acts. [Senate Report No. 98-542](#), see 1984 U.S. Code Cong. and Adm. News, p. 550.

1988 Acts. [House Report No. 100-694](#) and [House Conference Report No. 100-1029](#), see 1988 U.S. Code Cong. and Adm. News, p. 3999.

1991 Acts. Statement by President, see 1991 U.S. Code Cong. and Adm. News, p. 507.

1992 Acts. Statement by President, see 1992 U.S. Code Cong. and Adm. News, p. 3610.

1993 Acts. Statement by President, see 1993 U.S. Code Cong. and Adm. News, p. 1709-1.

1994 Acts. [House Report No. 103-572](#), see 1994 U.S. Code Cong. and Adm. News, p. 1487.

[Senate Report No. 103-332](#) and [House Conference Report No. 103-824](#), see 1994 U.S. Code Cong. and Adm. News, p. 3407.

1995 Acts. [Senate Report No. 104-129](#) and [House Conference Report No. 104-269](#), see 1995 U.S. Code Cong. and Adm. News, p. 318.

2000 Acts. [House Report No. 106-645](#) and Statement by President, see 2000 U.S. Code Cong. and Adm. News, p. 2459.

2004 Acts. [House Conference Report No. 108-792](#), see 2004 U.S. Code Cong. and Adm. News, p. 2577.

Statement by President, see 2004 U.S. Code Cong. and Adm. News, p. S46.

References in Text

The civil-service laws, referred to in subsecs. (a) and (c), are set forth in Title 5, Government Organization and Employees. See, particularly, [5 U.S.C.A. § 3301 et seq.](#)

The classification laws, referred to in subsecs. (a) and (c), are classified to chapter 51 and subchapter III of chapter 53 of Title 5.

The Small Business Investment Act of 1958, referred to in subsec. (b)(12)(C), (D), is Pub.L. 85-699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of this title. Title III of the Act is classified generally to subchapter III (§ 681 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Subsection (h)(2) of this section, referred to in subsec. (g)(4)(A), was redesignated subsec. (h)(1)(B) by Pub.L. 104-208, Div. D, Title II, § 205(a)(1), (2), Sept. 30, 1996, 110 Stat. 3009-738.

Codifications

In subsecs. (b)(4) and (c), “section 6101 of Title 41” substituted for “section 5 of Title 41” on authority of Pub.L. 111-350, § 6(c), Jan. 4, 2011, 124 Stat. 3854, which Act enacted Title 41, Public Contracts.

In subsec. (b)(8), “subchapter I of chapter 57 of title 5” substituted for “the Travel Expense Act of 1949” on authority of Pub.L. 89-554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (d), “Section 3324(a) and (b) of Title 31” was substituted for “Section 3648 of the Revised Statutes (31 U.S.C. 529)” on authority of Pub.L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Amendments

2010 Amendments. Subsec. (g)(6). Pub.L. 111-240, § 1117, added par. (6).

2004 Amendments. Subsec. (b)(12)(D). Pub.L. 108-447, Div. K, Title I § 131(1) struck out “and” at the end.

Subsec. (b)(13). Pub.L. 108-447, Div. K, Title I § 131(2) struck out the period at the end and inserted “; and”.

Subsec. (b)(14). Pub.L. 108-447, Div. K, Title I § 131(3) added par. (14).

Subsec. (g)(4)(C). Pub.L. 108-306, § 3(1), added subpar. (C).

Subsec. (h)(2). Pub.L. 108-306, § 3(2)(A), (B), redesignated par. (2) as par. (3) and inserted a new par. (2).

Subsec. (h)(3). Pub.L. 108-306, § 3(2)(A), redesignated former par. (2) as par. (3).

2000 Amendments. Subsec. (f)(1)(C). Pub.L. 106-554, § 1(a)(9) [Title II, § 209], rewrote subpar. (C), which formerly read: “each loan shall have been fully disbursed to the borrower prior to any sale.”

1996 Amendments. Subsec. (b)(7). Pub.L. 104-208, § 208(i), substituted proviso directing that with respect to deferred participation loans, the Administrator may authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation, for proviso directing that nothing herein shall be construed as authorizing the Administrator to contract or delegate his responsibility for loan servicing to other than Administration personnel, but with respect to deferred participation loans he may authorize participating lending institutions to take actions on his behalf relating to loan servicing, including, but not limited to the determination of

eligibility and creditworthiness, and loan monitoring, collection, and liquidation.

Subsec. (f)(3). Pub.L. 104-208, § 103(e), added provisions, effective March 31, 1997, restricting the sale of the unguaranteed portion of any loan made under section 636(a) of this title until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

Subsec. (h)(1)(A) to (D). Pub.L. 104-208, § 205(a)(1) to (3), designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, and in subpar. (A), deleted provisions specifying the information to be included in the central registration of all loans and trust certificates sold pursuant to subsecs. (f) and (g).

Subsec. (h)(2). Pub.L. 104-208, § 205(a)(4), added par. (2). Former par. (2) redesignated subpar. (B) of subsec. (h)(1).

Subsec. (h)(3), (4). Pub.L. 104-208, § 205(a)(1), (2), redesignated former pars. (3) and (4) as subpars. (C) and (D), respectively, of subsec. (h)(1).

1995 Amendments. Subsec. (g)(4)(A). Pub.L. 104-36, § 4(b), amended subpar. (A) generally. Prior to amendment subpar. (A) read as follows:

“(4)(A) The Administration may collect the following fees for loan guarantees sold into the secondary market pursuant to the provisions of subsection (f) of this section: an amount equal to (A) not more than 4/10 of one percent per year of the outstanding principal amount of the portion of such loan guaranteed by the Administration, and (B) not more than 50 percent of the portion of the sale price which is in excess of 110 percent of the outstanding principal amount of the portion of such loan guaranteed by the Administration. Any such fees imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 636(a) of this title: *Provided*, That such fees shall not be charged to the borrower whose loan is guaranteed: and, *Provided further*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section.”

1994 Amendments. Subsec. (b)(8). Pub.L. 103-282 inserted “: *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities” before semicolon at end.

Subsec. (b)(12), (13). Pub.L. 103-403, § 602, added pars. (12) and (13).

1993 Amendments. Subsec. (g)(4). Pub.L. 103-81, §§ 3(a), 7, temporarily added par. (4) and struck out former

par. (4) which read as follows: “The Administration shall not collect any fee for any guarantee under this subsection: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section.” See Effective and Applicability Provisions of 1993 Amendment note below.

1992 Amendments. Subsec. (f)(4). Pub.L. 102-564, § 307(d), substituted “section 636(a)(6)(C) of this title or subsection (e) of this section” for “subsection (e) of this section or section 636(a)(6), or 636(a)(8) of this title”.

1991 Amendments. Subsec. (g)(1). Pub.L. 102-140 substituted “or under section 696 of this title” for “except separate trust certificates shall be issued for loans approved under section 636(a)(13) of this title”.

1988 Amendments. Subsec. (g)(1). Pub.L. 100-590, § 113, substituted “except separate trust certificates shall be issued for loans approved” for “except those”.

1984 Amendments. Subsecs. (f) to (h). Pub. L. 98-352 added subsecs. (f), (g) and (h).

1980 Amendments. Subsec. (b)(7). Pub.L. 96-302 prohibited an interpretation that authorized the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but sanctioned, with respect to deferred participation loans, authority for participating lending institutions to take action on behalf of the Administrator determining eligibility and creditworthiness, loan monitoring, collection, and liquidation, etc.

1978 Amendments. Subsec. (c). Pub.L. 95-510 substituted “Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of Title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5” for “Any individual so employed may be compensated at a rate not in excess of \$50 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed \$15 per diem in lieu of subsistence and other expenses”.

1977 Amendments. Subsec. (e). Pub.L. 95-89 added subsec. (e).

1976 Amendments. Subsec. (e). Pub.L. 94-305 struck out subsec. (e) which provided for the appointment, by the Administrator, of the Chief Counsel for Advocacy who would serve as a focal point for complaints and suggestions, counsel small businessmen, develop proposals for change, represent interest of small businesses before federal agencies and enlist the cooperation of public and private agencies. See sections 634a to 634g of this title.

1974 Amendments. Subsec. (b)(10), (11). Pub.L. 93-386, § 3(1), added pars. (10) and (11).

Subsec. (e). Pub.L. 93-386, § 10, added subsec. (e).

1972 Amendments. Subsec. (a). Pub.L. 92-310 struck out provisions which authorized the Administrator to provide bonds for officers, employees, attorneys, and agents.

1961 Amendments. Subsec. (a). Pub.L. 87-367 deleted authorization for fifteen additional positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949.

Subsec. (d). Pub.L. 87-305 added subsec. (d).

Effective and Applicability Provisions

1996 Acts. Amendment by sections 103 and 205 of Div. D of Pub.L. 104-208 effective Oct. 1, 1996, except as otherwise provided, see section 3 of Div. D of Pub.L. 104-208, set out as a note under section 633 of this title.

Pub.L. 104-208, Div. D, Title II, § 208(j), Sept. 30, 1996, 110 Stat. 3009-747, provided that: “This section and the amendments made by this section [amending this section, sections 80a-18, 634, 662, 681, 682, 683, 687, 687b, 687d, 687k, 687l, 687m, and 697f of this title, and section 1431 of Title 12, Banks and Banking, repealing sections 687i and 687j of this title, enacting provisions set out as notes under sections 681 and 683 of this title, and amending provisions set out as notes under section 631 of this title] shall become effective on the date of enactment of this Act [Sept. 30, 1996].”

1995 Acts. Pub.L. 104-36, § 8, Oct. 12, 1995, 109 Stat. 297, provided that:

“(a) **In general.**--Except as provided in subsection (b), the amendments made by this Act [amending this section and sections 636, 694b note, and 697 of this title] do not apply with respect to any loan made or guaranteed under the Small Business Act [this chapter] or the Small Business Investment Act of 1958 [chapter 14B (§ 661 et seq.) of this title] before the date of enactment of this Act [Oct. 12, 1995].

“(b) **Exceptions.**--The amendments made by this Act [amending this section and sections 636, 694b note, and 697 of this title] apply to a loan made or guaranteed under the Small Business Act [this chapter] or the Small Business Investment Act of 1958 [chapter 14B (§ 661 et seq.) of this title] before the date of enactment of this Act [Oct. 12, 1995], if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act [Oct. 12, 1995].”

1993 Acts. Section 3(b) of Pub.L. 103-81 provided that: “Any new fees imposed by the Administration pursuant to the authority conferred by subsection (a) [amending this section] shall be applicable only to loans initially sold in the secondary market pursuant to the provisions of section 5(f) of the Small Business Act [subsec. (f) of this section] after August 31, 1993.”

[Section 3(b) of Pub.L. 103-81, set out above, repealed effective Sept. 30, 1996, see section 7 of Pub.L. 103-81 set out below.]

Section 7 of Pub.L. 103-81, which provided that sections 3 and 5 of Pub.L. 103-81 [amending this section and

section 636 of this title, and enacting provisions set out as notes under this section and section 636 of this title] were repealed on Sept. 30, 1996, was itself repealed, effective Sept. 29, 1996, by Pub.L. 104-208, Div. D, Title I, § 109(a), Sept. 30, 1996, 110 Stat. 3009-733.

1980 Acts. Amendment by Pub.L. 96-302 effective Oct. 1, 1980, see section 507 of Pub.L. 96-302, set out as a note under section 631 of this title.

1978 Acts. Section 105 of Pub.L. 95-510 provided that: “This Act [which amended this section and sections 636 and 637 of this title and repealed sections 5031, 5032 and 5083 of Title 42, The Public Health and Welfare] shall be effective October 1, 1979.”

Prior Provisions

Prior similar provisions were contained in § 205 of Act July 30, 1953, c. 282, Title II, 67 Stat. 234, as amended by Act Aug. 9, 1955, c. 628, § 4, 69 Stat. 547, which was classified to this section. See Codification note under § 631 of this title.

Appropriations Not Authorized

Section 6 of Pub. L. 98-352 provided that: “This Act [amending this section and sections 633 and 639 of this title and enacting provisions set out as notes under this section and section 631 of this title] does not authorize the appropriation of any funds.”

Asset Sales

Pub.L. 105-135, Title V, § 505, Dec. 2, 1997, 111 Stat. 2624, provided that: “In connection with the Administration's implementation of a program to sell to the private sector loans and other assets held by the Administration, the Administration shall provide to the Committees a copy of the draft and final plans describing the sale and the anticipated benefits resulting from such sale.”

[Pub.L. 105-135 effective Oct. 1, 1997, see section 3 of Pub.L. 105-135, set out as a note under section 631 of this title.]

Preferred Lender Standard Review Program

Pub.L. 104-208, Div. D, Title I, § 103(h), Sept. 30, 1996, 110 Stat. 3009-728, provided that: “Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], the Administrator shall commence a standard review program for the Preferred Lender Program established by section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)) [subsec. (b)(7) of this section], which shall include annual or more frequent assessments of the participation of the lender in the program, including defaults, loans, and recoveries of loans made by that lender

under the authority of this section [section 103 of Div. D of Pub.L. 104-208, which amended this section and section 636 of this title, and enacted provisions set out as notes under this section]. The Administrator shall require such standard review for each new entrant to the Preferred Lender Program.”

[Section 103(h) of Div. D of Pub.L. 104-208 effective Oct. 1, 1996, except as otherwise provided, see section 3 of Div. D of Pub.L. 104-208, set out as a note under section 633 of this title.]

Promulgation of Rules and Regulations

Section 3 of Pub. L. 98-352 provided that:

“(a) Within ninety days after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act, [subsec. (h)(1) of this section] and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act [subsec. (h)(2) of this section].

“(b) Within nine months after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act [amending this section and sections 633 and 639 of this title and enacting provisions set out as notes under this section and section 631 of this title] other than as provided for in subsection (a).”

“(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended [15 U.S.C. 634(g)], until final rules and regulations become effective.”

Small Business Loan Secondary Market Study

Pub.L. 102-366, Title III, § 311, Sept. 4, 1992, 106 Stat. 1005, directed the Secretary of the Treasury, the Director of the Congressional Budget Office, and the Chairman of the Securities and Exchange Commission, in consultation with the Administrator of the Small Business Administration, to conduct a study of the potential benefits of, and legal, regulatory, and market-based barriers to, developing a secondary market for loans to small businesses, specified considerations to be included in the study, and required that, not later than 1 year after Sept. 4, 1992, a report be submitted to Congress on the results of the study, including recommendations for legislation to facilitate the development of a secondary market for loans to small businesses.

Small Business Protection

Pub.L. 90-104, Title III, §§ 301 to 303, Oct. 11, 1967, 81 Stat. 272, authorized the Administrator of the Small Business Administration to conduct a special study of the impact on small business concerns of robbery, burglary, shoplifting, vandalism, and other criminal activities, and report to the President and to the Congress the results of the study, including such recommendations as he may deem appropriate for administrative and legislative

action, within one year after Oct. 11, 1967.

Study and Report Regarding 1993 Amendments to Impose Secondary Market Fees and to Reduce Loan Guarantee Percentages

Section 6 of Pub.L. 103-81 provided that: “The Administration shall study, monitor and evaluate the impact of the amendments made by sections 3 and 5 of this Act [amending this section and section 636 of this title] on the ability of small business concerns and small business concerns owned and controlled by minorities and women, to obtain financing and the impact of such sections on the effectiveness, viability and growth of the secondary market authorized by section 5(f) of the Small Business Act [subsec. (f) of this section]. Not later than 16 months after the date of enactment [Aug. 13, 1993], and annually thereafter, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report containing the Administration's findings and recommendations on such impact, specifically including changes in the interest rates on financings provided to small business concerns and small business concerns owned and controlled by minorities and women, through the use of the secondary market. The Administration shall segregate such findings and recommendations in the study according to the ethnic and gender components in these categories. Solely for the purposes of the study authorized herein, the term ‘small business concerns owned and controlled by minorities’, includes businesses owned and controlled by individuals belonging to one of the designated groups listed in section 8(d)(3)(C) of the Small Business Act [[15 U.S.C.A. § 637\(d\)\(3\)\(C\)](#)].”

Viability of Secondary Markets

Pub.L. 102-366, Title II, § 226, Sept. 4, 1992, 106 Stat. 1001, provided that: “The Administrator of the Small Business Administration is authorized and directed to take such actions in the awarding of contracts as is deemed necessary to assure the continued long-term viability of the secondary markets in loans, debentures or other securities guaranteed by the Administration.”

CROSS REFERENCES

Powers of Administration respecting loans, see [15 USCA § 693](#).

CODE OF FEDERAL REGULATIONS

Business loans, small business administration, see [13 C.F.R. § 120.1 et seq.](#)

Debt collection through offset, see [13 CFR § 140.1 et seq.](#)

Disadvantaged business status protest and appeal procedures, see [13 CFR § 124.601 et seq.](#)

Disaster loan program, small business administration, see [13 CFR § 123.1 et seq.](#)

Group life insurance, federal employees, use of matrix, see [48 CFR § 2152.370](#).

Lobbying restrictions, see [13 CFR § 146.100 et seq.](#)

Minority small business and capital ownership development, see [13 CFR § 124.1 et seq.](#)

Nondiscrimination in financial assistance programs, see [13 CFR § 113.1 et seq.](#)

Office of hearings and appeals, rules of procedure, see [13 CFR § 134.101 et seq.](#)

Program fraud civil remedies act regulations, see [13 CFR § 142.1 et seq.](#)

Representation and indemnification of small business administration employees, federal torts claims act, see [13 CFR § 114.100 et seq.](#)

Small business development centers, see [13 CFR § 130.100 et seq.](#)

Small business size regulations, see [13 CFR § 121.101 et seq.](#)

Standards of conduct, see [13 CFR § 105.101 et seq.](#)

Standards for conducting business with the small business administration, see [13 CFR § 103.1 et seq.](#)

Uniform administrative requirements for grants and cooperative agreements to state and local governments, see [13 CFR § 143.1 et seq.](#)

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[72 ALR, Fed. 191](#), Pendent Jurisdiction of Federal Court Over State Claim Against Party Not Otherwise Subject to Federal Jurisdiction Where State Claim is Sought to be Joined With Claim Arising Under Laws, Treaties, or Constitution Of...

[73 ALR, Fed. 338](#), When is Claim Properly Presented to Federal Agency, Under [28 U.S.C.A. § 2675\(A\)](#), for Purposes of Satisfying Prerequisite to Subsequent Suit Under Federal Tort Claims Act.

[38 ALR, Fed. 546](#), United States Postal Service as Subject to Garnishment.

[19 ALR, Fed. 166](#), Availability of Interpleader to Insurance Company for Resolving Dispute as to Insurance Policy Under Federal Interpleader Acts (Presently [28 U.S.C.A. §§ 1335, 1397, 2361](#)) and Rule 22 of Federal Rules of Civil...

[174 ALR 549](#), Interest Necessary to Maintenance of Declaratory Determination of Validity of Statute or Ordinance.

[149 ALR 349](#), Justiciable Controversy Within Declaratory Judgment Act as Predicable Upon Advice, Opinion, or Ruling of Public Administrative Officer.

[149 ALR 1103](#), Actions Under Declaratory Judgment Act as Subject to Limitations or Conditions of Jurisdiction Imposed by Other Statutes.

[53 ALR 1237](#), Legal Rights and Remedies in Respect of Funds Raised by Voluntary Committee for Public or Quasi Public Purpose.

Encyclopedias

[Am. Jur. 2d Interpleader § 34](#), Existence of Diversity--Government Parties.

[Am. Jur. 2d United States § 67](#), Sue-And-Be-Sued Clause.

Forms

[Federal Procedural Forms § 24:19](#), Suits Against the Sba.

[Federal Procedural Forms § 24:25](#), Complaint in District Court--For Declaratory Judgment as to Small Business Size Status [15 U.S.C.A. § 634; [28 U.S.C.A. §§ 1331, 2201](#); [Fed. R. Civ. P. 8\(A\), 57](#)].

[Federal Procedural Forms § 24:35](#), Complaint--Against Sba--Breach of Contract [15 U.S.C.A. § 634(B)].

[Am. Jur. Pl. & Pr. Forms Public Works & Contracts § 22](#), Complaint in Federal Court--By Unsuccessful Bidder--Against Small Business Administration--For Declaratory Judgment as to Small Business Size Status of Successful...

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[Wright & Miller: Federal Prac. & Proc. § 7144](#), Subdivision (10)--Presumptions Under Acts of Congress.

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1. Constitutionality


This section is constitutionally valid. [Vincent v. Small Business Administration, C.A.4 \(W.Va.\) 1968, 402 F.2d 769.](#)

2. Construction with other laws

“Sue and be sued” clause of Small Business Act does not trump provisions of Contract Disputes Act granting Claims Court exclusive jurisdiction over all disputes arising from government contracts covered by Contract Disputes Act. [A & S Council Oil Co., Inc. v. Lader, C.A.D.C.1995, 56 F.3d 234, 312 U.S.App.D.C. 270. Federal Courts](#)  1139

Express statutory authority for Small Business Administration (SBA) to sue and be sued permits award of damages against SBA, but does not supplant status of Federal Tort Claims Act as sole avenue of relief for tort claimants against government and its agencies. [J.C. Driskill, Inc. v. Abdnor, C.A.4 \(Va.\) 1990, 901 F.2d 383. United States](#)  53(14)

This section with its specific grant of district court jurisdiction without regard to amount in controversy, was not limited by \$10,000 maximum of [section 1346 of Title 28](#), and thus federal district court had jurisdiction over plaintiff's nontort claims against the United States, the Small Business Administration, and its administrator. [Robinson v. U.S., Through Small Business Admin., M.D.La.1982, 551 F.Supp. 1120. Federal Courts](#)  979

This section which provides that the Administrator may sue or be sued in district court without regard to amount in controversy speaks to all jurisdictional amount requirements, including requirement that action against the United States in district court not exceed \$10,000 in amount, and does not speak only to the requirements of the general diversity and federal question jurisdictional statutes, [sections 1331 and 1332 of Title 28](#), that the amount in controversy exceed \$10,000. [Selected Risks Ins. Co. v. Kobelinski, E.D.Pa.1976, 421 F.Supp. 431. Federal Courts](#)  979

Counterclaim based upon Small Business Administration's alleged failure to properly dispose of chattels which came into its possession pursuant to chattel mortgage and to properly dispose of patents and note which it had as additional collateral fell within "discretionary acts" exclusion from liability under Federal Tort Claims Act, §§ 1346(b) and 2671 et seq. of Title 28. [U.S. v. Delta Industries, Inc., N.D.Ohio 1966, 275 F.Supp. 934. United States](#) ↪ 78(12)

Although Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, provides for review of governmental agency actions, § 559 of Title 5 providing that no subsequent legislation could supersede or modify its provision except to extent that such legislation did so expressly did not render ineffective this section prohibiting issuance of injunction against Administrator of Small Business Administration. [vonLusch v. Hoffmaster, D.C.Md.1966, 253 F.Supp. 633. Administrative Law And Procedure](#) ↪ 661; [Statutes](#) ↪ 149

Waiver of Small Business Administration's (SBA's) sovereign immunity effected by "sue and be sued" statute was not impliedly restricted by absence of provision waiving sovereign immunity from environmental liability in CERCLA, Resource Conservation and Recovery Act (RCRA), and Clean Water Act (CWA). [Aces & Eights Realty, LLC. v. Hartman, W.D.N.Y.2002, 2002 WL 31663515, Unreported. United States](#) ↪ 53(14)

3. Law governing

Illinois law governed dispute between United States and bank arising from Small Business Administration (SBA) loan guaranty executed in Illinois. [U.S. v. First National Bank of Cicero, C.A.7 \(Ill.\) 1992, 957 F.2d 1362 . Federal Courts](#) ↪ 433


In action brought against guarantors by United States on behalf of Small Business Administration, which was assignee of payee of promissory note, Michigan law of coverture did not apply and did not preclude execution upon separately held property of guarantor who was a married woman at the time guaranty agreement was signed. [U.S. v. Lowell, C.A.6 \(Mich.\) 1977, 557 F.2d 70. Federal Courts](#) ↪ 413


In action brought against guarantors by United States on behalf of Small Business Administration, which was assignee of payee of promissory note, federal law to be applied with respect to execution of separately held property of guarantor who was married woman at time guaranty agreement was signed mandated that peculiar and obsolete Michigan law of coverture not be allowed to stifle federal government programs in Michigan, in view of fact that such law would not be applicable in any other state in the union. [U.S. v. Lowell, C.A.6 \(Mich.\) 1977, 557 F.2d 70. Federal Courts](#) ↪ 413



Federal law defines rights of parties to a Small Business Administration loan and guaranty transaction. [U.S. v. Olsen, C.A.1 \(Mass.\) 1975, 515 F.2d 1269. Federal Courts](#) ↪ 413


Regulation providing that guaranty agreement held by Small Business Administration (SBA) shall be construed and enforced in accordance with applicable federal law embraces existing decisional law that provides for discretionary application of state law in fashioning appropriate federal law, and the language "federal law" in the regulation necessarily contemplates application of state law under applicable circumstances. [U.S. v. Schoenhard,](#)


[N.D.Ill.1993, 819 F.Supp. 751. United States](#)  53(8)

In action brought by United States seeking to recover on certain guarantees on loan made by Small Business Administration, federal law would apply in that this was not a Small Business Administration loan negotiated or hand tailored with reference to Oklahoma law but was a routine nationwide act of the Small Business Administration. [U.S. v. Glover, W.D.Okla.1977, 453 F.Supp. 659. Federal Courts](#)  413


Indebtedness represented by notes and real estate mortgages executed by plaintiff to Small Business Administration was discharged once Small Business Administration availed itself of procedural and substantive advantages of foreclosure by advertisement under Minnesota law and thereby waived rights otherwise available under federal common law, Small Business Administration regulations, and mortgages to collection of a deficiency judgment. [Dalton Motors, Inc. v. Weaver, D.C.Minn.1978, 446 F.Supp. 711. United States](#)  53(8)


Where Small Business Administration was not attempting to collect a deficiency judgment but rather was proceeding against guarantor of corporate debt on her direct and primary obligation to pay the debt of the defaulting corporate debtor, federal law, rather than Georgia law, governed, and fact that the Administration had not obtained confirmation of sale of corporate property within 30 days did not preclude Administration from maintaining action against the guarantor. [Ricks v. U.S., S.D.Ga.1976, 434 F.Supp. 1262. Federal Courts](#)  407.1; [United States](#)  53(8)


In determining whether, in action by the United States to foreclose mortgages executed as security for a Small Business Administration loan, the court should adopt Illinois redemption law as the federal rule, the test was to weigh all the relevant factors, viz., the intent of the parties, interest of the federal government, and interest of the state, but the most important criterion was whether state law could be given effect without either conflicting with federal policy or destroying needed uniformity in the pertinent federal law in its operation within the various states. [U.S. v. Marshall, N.D.Ill.1977, 431 F.Supp. 888. Mortgages](#)  591(1)


The Small Business Administration is subject to local filing laws designed to protect general creditors. [In re Fried Furniture Corp., E.D.N.Y.1968, 293 F.Supp. 92, affirmed 407 F.2d 360. United States](#)  53(8)

4. Discretion of Administration


Administration's interpretation of forgiveness provision of the Southeast Hurricane Disaster Relief Act of 1965, even if included in the fine print of disaster loan agreements, could not prevent loan recipients from the full recovery which Congress intended. [Dore v. Kleppe, C.A.5 \(La.\) 1976, 526 F.2d 697. United States](#)  77


Though application for disaster loan was initially approved by the Small Business Administration, it was within the discretion of the Administrator to withhold funds when it was thereafter ascertained that applicant was involved to some extent in gambling, though applicant contended that gambling activities were limited to particular club and that he intended to utilize and Administration funds to reconstruct a different club at which no gambling was to be carried on. [Romeo v. U.S., C.A.5 \(Miss.\) 1972, 462 F.2d 1036, certiorari denied 93 S.Ct. 1361, 410 U.S. 928, 35 L.Ed.2d 589. United States](#)  53(8)


Decision of Small Business Administration (SBA) to sell or assign loan was not abuse of discretion, since such conduct was authorized by federal statute and regulations; SBA's policies precisely stated that administrator's powers and duties included capacity to assign or sell, or otherwise dispose of loans for cash or credit any evidence of debt, in his discretion and upon such terms and conditions and for such consideration as administrator determined to be reasonable. [Pramco, LLC v. Torres, D.Puerto Rico 2003, 286 F.Supp.2d 164. United States](#)  53(8)


This chapter clearly grants the Administrator wide discretion to effectuate the purposes of this chapter. [Duke City Lumber Co. v. Butz, D.C.D.C.1974, 382 F.Supp. 362, adopted in part 539 F.2d 220, 176 U.S.App.D.C. 218, certiorari denied 97 S.Ct. 737, 429 U.S. 1039, 50 L.Ed.2d 751. United States](#)  53(8)


5. Guarantor's liability

Guarantors of Small Business Administration loan were not misled by SBA after default occurred concerning its intentions to bid at foreclosure to preclude enforcement of guaranty on theory that security had not been dealt with "as permitted by law" since conditional, tentative statements did not rise to a level of promise or assertion of future conduct and statement of administrative officer could not be relied upon as he was not authorized by statute to compromise claims. [U.S. v. Mallett, C.A.1 \(N.H.\) 1986, 782 F.2d 302. Guaranty](#)  72

Where guarantor of Small Business Administration loan expressly agreed in guaranty agreement that releases of other collateral would not affect her liability, release of other guarantors by settlement did not release first guarantor, even if judgment of dismissal of government's suit against released guarantors did not contain any reservation of rights against other guarantors. [U.S. v. Southern Cycle Accessories, Inc., C.A.5 \(La.\) 1978, 567 F.2d 296. Guaranty](#)  72

Although guaranty agreements indicated signers were acting as guarantors of principal debt, that alone would not preclude them from being held principally liable on promissory notes. [U.S. v. Beardslee, C.A.6 \(Mich.\) 1977, 562 F.2d 1016, certiorari denied 99 S.Ct. 113, 439 U.S. 833, 58 L.Ed.2d 128. Guaranty](#)  35

Despite fact that certain guarantors did not sign guaranty agreement until after bank officials closed loan, where closing of loan was made by bank officials on erroneous belief that only two guarantors were necessary on Small Business Administration loan and where guaranty agreement, which expressly stated that guarantors executed agreement in order to induce bank to make loan and provide security for loan, was then signed in order to comply with Small Business Administration requirements, guarantors were liable under guaranty agreement. [U.S. v. Lowell, C.A.6 \(Mich.\) 1977, 557 F.2d 70. Guaranty](#)  16(3)

Terms of loan guaranty by which defendant guarantor and others unconditionally guaranteed to lender the payment of loan when due in accordance with terms thereof in amounts which did not exceed the sums set opposite their respective signatures was not ambiguous, and defendant guarantor was liable for the full limit of his \$116,000 guaranty, as set forth in agreement, when sum due on note in default plus interest exceeded that amount. [McNatt v. U.S., C.A.5 \(Tex.\) 1968, 400 F.2d 846. Guaranty](#)  36(3)

To extent that conditions placed upon guarantors of loan made by Small Business Administration to their corporation were more broadly stated in guaranty agreement than those contracted by debtor, guarantors waived Louisiana codal sections, [LSA-C.C. art. 3037](#), providing that suretyship cannot exceed what may be due by debtor, nor be contracted under more onerous conditions. [Vince v. U.S., C.A.5 \(La.\) 1968, 394 F.2d 462](#), certiorari denied [89 S.Ct. 92, 393 U.S. 827, 21 L.Ed.2d 99](#). [Guaranty ↪ 36\(2\)](#)

Obligations of guarantors on Small Business Administration loan were absolute and unconditional. [U.S. v. Newton Livestock Auction Market, Inc., C.A.10 \(Kan.\) 1964, 336 F.2d 673](#). [Guaranty ↪ 34](#)

By proceeding with foreclosure action against collateral securing loan made by Small Business Administration, government was not precluded from obtaining judgment against guarantors. [U.S. v. Newton Livestock Auction Market, Inc., C.A.10 \(Kan.\) 1964, 336 F.2d 673](#). [Election Of Remedies ↪ 3\(1\)](#)


Although guaranty of Small Business Administration (SBA) loan referred to a note dated March 27, 1986, guarantor was liable with respect to default on note dated April 1, 1986, where the guaranty specifically stated that it was made to induce bank to loan money to particular company, parties to the April 1 note were the bank and that company, guaranty referred to a note in the principal amount of \$360,000 with interest at 12.25%, and note set forth principal sum of \$360,000 at rate of 12.25%. [U.S. v. Schoenhard, N.D.Ill.1993, 819 F.Supp. 751](#). [United States ↪ 53\(8\)](#)

Although there was in fact no reorganization of corporate debtor within contemplation of loan papers to effect that indebtedness would immediately become due and payable without notice or demand upon reorganization without prior written consent of holder, and although Small Business Administration did not forbear on calling note because of corporate debtor's reorganization or erroneous belief on part of Administration that there was a reorganization, where guaranty was supported by valid consideration present in stock sale transactions between stockholders, guaranty was enforceable by the United States. [U.S. v. Glover, W.D.Okla.1977, 453 F.Supp. 659](#). [Guaranty ↪ 16\(1\)](#)


6. Insurance of security

Where by terms of guaranty contracts Small Business Administration could have made an entire release of security for loan and still have recovered from guarantors and guarantors expressly waived notice of any default by mortgagor, guarantors had no right to credit against judgment amount of storm damage to collateral on theory of increased risk resulting when United States after foreclosure permitted insurance to lapse on collateral. [U.S. v. Newton Livestock Auction Market, Inc., C.A.10 \(Kan.\) 1964, 336 F.2d 673](#). [Guaranty ↪ 78\(2\)](#)


Statutory power of Small Business Administration to insure security for loan and contractual right of Administration to insure and charge cost to mortgagor did not require Administration to insure for benefit of mortgagor and when policies lapsed for failure of mortgagor to pay premiums, Administration was under no obligation to insure. [U.S. v. Newton Livestock Auction Market, Inc., C.A.10 \(Kan.\) 1964, 336 F.2d 673](#). [United States ↪ 53\(8\)](#)


When Small Business Administration was notified that borrower could not pay premium due on realty securing loan after foreclosure action had been brought, government's letter stating that policy should lapse and that government was its own insurer was an election by government to bear risk of possible loss of part of its security but did not entitle borrower to credit on judgment resulting when property was bid in by Administration for amount of loss occurring to property when it was thereafter damaged by storm. [U.S. v. Newton Livestock Auction Market, Inc., C.A.10 \(Kan.\) 1964, 336 F.2d 673. United States](#)  53(8)


7. Performance bonds

Administrator of Small Business Administration was justified in requiring a 100% performance bond and a labor and materials payment bond where borrower intended to be his own building contractor and the uncompleted building would be doubtful security. [vonLusch v. Hoffmaster, D.C.Md.1966, 253 F.Supp. 633. United States](#)  53(8)

8. Award of contract

Small Business Administrator was acting within the scope of his authority in awarding contract, which was subsequently withdrawn, for interment flags for the Veterans Administration to a concern owned by disadvantaged persons and thus could not be enjoined from issuing to the Veterans Administration a certificate of competency with respect to the concern. [Valley Forge Flag Co., Inc. v. Kleppe, C.A.D.C.1974, 506 F.2d 243, 165 U.S.App.D.C. 182. United States](#)  53(8)

After plaintiff corporation had submitted low bid in response to government invitation with total small business set-aside and after protest had been filed on ground that plaintiff was not qualified "small business", contracting officer was authorized, upon passage of ten-day period in which Small Business Administration might have ruled on protest and upon officer's determining that any delay would be disadvantageous to government, to make final award of road construction contract to plaintiff, even though the plaintiff was in fact not a small business. [Mid-West Const., Limited v. U.S., Ct.Cl.1967, 387 F.2d 957, 181 Ct.Cl. 774. United States](#)  64.15

Where Small Business Administration has failed to pass within 10 working days, upon protest that low bidder on contract with small business set-aside is not qualified "small business" and where contracting officer makes determination that further delay would be disadvantageous to government and makes award, it is irrelevant whether contracting officer personally knew that his finding would result in a binding award despite Administration's subsequent determination that low bidder was not a small business. [Mid-West Const., Limited v. U.S., Ct.Cl.1967, 387 F.2d 957, 181 Ct.Cl. 774. United States](#)  64.15

9. Extension of contracts

Purported extension of real estate sales contract for possession by liquidation loan specialist for Small Business Administration (SBA) was not binding upon SBA where extension was accomplished without knowledge or approval of liquidation loan specialist's supervisor and purported extension would have rendered alleged agreement invalid by failing to reflect agreement concerning dates for payment of earnest money. [Mueller v. Abdnor, E.D.Mo.1991, 765 F.Supp. 551, affirmed in part, reversed in part 972 F.2d 931, rehearing denied. United States](#)

🔑 53(8)

10. Breach of contract

Bank materially breached loan guaranty agreement with Small Business Administration (SBA) by neglecting to disclose status of bank director as principal shareholder of corporation whose assets were purchased through guaranteed loan; conflict of interest regulations were incorporated into guaranty agreement by reference, and failure to comply with conflict of interest regulations that were essential to sound operation of SBA loan guaranty program constituted material breach of guaranty agreement that justified SBA in invoking its right to be released from obligation to purchase its share of defaulted, guaranteed loan. [Heritage Bank & Trust Co. v. Abdnor, C.A.7 \(Ill.\) 1990, 906 F.2d 292. United States](#) 🔑 53(8)

Under subsec. (b) of this section, landlord could maintain breach of contract action against Administrator based upon his alleged wrongful failure to issue lease guarantees of which landlord was to be third-party beneficiary, where there was Administration fund separate and apart from Treasury from which any judgment against Administrator could be paid. [Taylor v. Administrator of Small Business Admin., C.A.5 \(Tex.\) 1983, 722 F.2d 105.](#)

Administration employee, who allegedly failed to execute oral agreement to sell certain instruments of indebtedness owned by Administration in connection with guaranteed loan, could not be found to have induced another creditor to breach its part of alleged contract calling for sale of the notes, security agreements and collateral interests since although allegation was that the employee induced the other creditor to refuse to perform, such creditor could have declined performance for a number of reasons, not the least of which was that in view of the government's position its asserted contract was invalid. [Duncan v. Peninger, C.A.4 \(N.C.\) 1980, 624 F.2d 486, certiorari denied 101 S.Ct. 857, 449 U.S. 1078, 66 L.Ed.2d 800. Torts](#) 🔑 242

Violation of agreement between Small Business Administration and lender which occurred when lender charged side loans to borrowers, in effect allowing lender to charge borrowers higher interest rate than guaranty agreements permitted, was not so material breach of agreement as to release SBA from obligation to honor its guaranties or require lender to disgorge guaranty funds already received, where side loans did not diminish initial flow of funds to borrower and did not negatively impact on borrowers' ability to repay loans, lender's collateral position on secondary loans was in all cases subordinate to SBA and its position on any primary loan, and risk of loan denial if improper fees were charged was not clearly within contemplations of parties at time agreement was entered. [Eastern Illinois Trust & Sav. Bank v. Sanders, N.D.Ill.1986, 631 F.Supp. 1393, affirmed 826 F.2d 615. United States](#) 🔑 53(8)

Purchaser's claim for monetary damages stemming from Small Business Administration's alleged breach of contract for sale of certain land to purchaser following public auction of land was actionable under subsec. (b) (1) of this section. [Claxton v. Small Business Administration of U.S. Government, S.D.Ga.1981, 525 F.Supp. 777. United States](#) 🔑 53(14)

11. Acquisition of property

Deed executed to Small Business Administration in lieu of foreclosure on mortgages did not, with regard to [McKinney's N.Y. Lien Law § 13](#), providing that no instrument of conveyance recorded subsequent to commencement of improvement, and within four months after completion thereof, shall be valid as against liens filed within four months from recording of conveyance, unless instrument contains covenant by grantor that he will receive consideration for such conveyance and will hold right to receive consideration as trust fund to be applied first for purpose of paying cost of improvement, create trust fund out of which contractor's mechanic's lien could subsequently be discharged. [U.S. v. Joe Murray's Point Lookout, Inc., S.D.N.Y.1973, 359 F.Supp. 335. Mechanics' Liens](#) 🔑 115(1)

12. Taxation

Property held by Small Business Administration in lieu of foreclosure is not subject to state and local taxation. [U.S. v. Joe Murray's Point Lookout, Inc., S.D.N.Y.1973, 359 F.Supp. 335. Municipal Corporations](#) 🔑 966(1); [Taxation](#) 🔑 2064

13. Recordation

Small Business Administration (SBA) was entitled under Missouri law to recover damages for slander of title based on prospective purchaser's filing of real estate contract with recorder of deeds knowing that contract had expired and was therefore false; prospective purchaser acted maliciously when he presented contract for filing and SBA demonstrated by a preponderance of the evidence that filing placed a cloud upon its title and that sale failed to close as a result of filing. [Mueller v. Abdnor, E.D.Mo.1991, 765 F.Supp. 551](#), affirmed in part , reversed in part [972 F.2d 931](#), rehearing denied. [Libel And Slander](#) 🔑 132

14. Mortgage foreclosure

Administrator of Small Business Administration was not required to accept offer by owners of 80 percent of capital stock in corporation to pay an indebtedness secured by a chattel mortgage or deed of trust rather than to proceed with foreclosure sales of the corporation's property. [Duncan v. Furrow Auction Co., C.A.4 \(N.C.\) 1977, 564 F.2d 1107](#), certiorari denied [98 S.Ct. 2232, 436 U.S. 904, 56 L.Ed.2d 401. United States](#) 🔑 53(8)

Where Small Business Administration held both first and second mortgages on property to secure payment of notes which were in default, it acted properly in foreclosing on second mortgage and applying proceeds of sale to discharge first mortgage. [U.S. v. Olsen, C.A.1 \(Mass.\) 1975, 515 F.2d 1269. United States](#) 🔑 53(8)

15. Leases

Small Business Administration may enter into leases of real property owned by it while it seeks purchaser. [U.S. v. Schwartz, S.D.N.Y.1968, 278 F.Supp. 328. United States](#) 🔑 53(8)

Where Small Business Administration acquired fee title to hotel property in foreclosure sale and proceeds of sale were insufficient to meet unpaid balance due on loan to hotel owner in which Administration had participating interest, administration, in effort to recoup part of its loss, had right to lease property for one-third of net

profits earned in operation of hotel during lease period and lease did not effect forfeiture of Administration's exemption from state and local taxes on theory that lease arrangement constituted joint venture and that lease was ultra vires. [U.S. v. Schwartz, S.D.N.Y.1968, 278 F.Supp. 328. Taxation ↪ 2358](#)

16. Personal property

Trustee who offered personal property for sale at door of county courthouse and then invited all present to go to site of theater at which the heavy personalty, subject to deed of trust securing Small Business Administration loan in default, was located and who sold the personalty at the theater properly exercised his discretion by not adjourning sale at courthouse although courthouse was place of sale under deed of trust. [U.S. v. Gaskins, E.D.N.C.1964, 232 F.Supp. 667, affirmed 335 F.2d 835. United States ↪ 53\(8\)](#)

17. Deferral of repayment

Decision to defer borrowers' obligations under Small Business Administration loans was not left to "unguided discretion" of individual loan officers, for purpose of borrowers' challenge to statute permitting such deferrals, where loan officers could grant such deferrals only where borrowers would otherwise become or remain insolvent, only where deferrals would permit them to become or remain viable businesses, and only if borrowers executed repayment agreements. [U.S. v. Don B. Hart Equity Pure Trust, C.A.5 \(Tex.\) 1987, 818 F.2d 1246. United States ↪ 53\(8\)](#)

18. Acceleration


Small Business Administration did not act in ad hoc manner, in denying borrowers any further deferrals and accelerating loan, where evidence showed that SBA had granted borrowers repeated deferrals in past and had taken action to accelerate loan only after borrowers' continuing default and failure to make payment for period in excess of two years. [U.S. v. Don B. Hart Equity Pure Trust, C.A.5 \(Tex.\) 1987, 818 F.2d 1246. United States ↪ 53\(17\)](#)



Parties who had borrowed money from Small Business Administration, and who had repeatedly been granted deferrals on payment obligations, did not have due process right to actual written notice of SBA deferral program and opportunity to be heard on issue before SBA could accelerate loan. [U.S. v. Don B. Hart Equity Pure Trust, C.A.5 \(Tex.\) 1987, 818 F.2d 1246. Constitutional Law ↪ 4108](#)


19. Rescission

Where Administrator acted within the scope of his legitimate authority in rescinding approval of disaster loan, there could be no recovery of damages against him in his personal capacity. [Romeo v. U.S., C.A.5 \(Miss.\) 1972, 462 F.2d 1036, certiorari denied 93 S.Ct. 1361, 410 U.S. 928, 35 L.Ed.2d 589. United States ↪ 50.10\(1\)](#)


Even if valid real estate sales contract existed between prospective purchaser and Small Business Administration (SBA) as vendor, SBA did not waive its right to rescind contract by failing to immediately inform prospective purchaser of expiration of contract; waiver and estoppel could not arise from unauthorized representations of


SBA liquidation loan specialist handling property to prospective purchaser that contract was still in force since his representation was not authorized. [Mueller v. Abdnor, E.D.Mo.1991, 765 F.Supp. 551](#), affirmed in part , reversed in part [972 F.2d 931](#), rehearing denied. [Vendor And Purchaser](#)  [95\(1\)](#)


When Small Business Administration, which had agreed with lending bank to guarantee 90 percent of loan made by bank to borrowing manufacturer, discovered that bank official who handled borrower's loan account had negligently failed to obtain agreed upon security documents, which nonperformance by bank went to very root of guarantee contract and gave Small Business Administration right to rescind its contract, it was confronted with election of remedies; it could elect to rescind its agreement with bank or to stand on it. [First Nat. Bank of McMinnville, Tennessee v. Kleppe, E.D.Tenn.1975, 409 F.Supp. 110](#). [Guaranty](#)  [62](#); [Guaranty](#)  [72](#)


If Small Business Administration wished to rescind its agreement guaranteeing 90 percent of bank's loan to borrowing manufacturer after discovery of material breach by bank of agreement though bank's negligent failure to obtain agreed upon security documents from borrower, Administration had reasonable time in which to do so, but Administration's right to rescind was not suspended while it and bank experimented with other remedies, i.e., second loan, as alternatives to rescission. [First Nat. Bank of McMinnville, Tennessee v. Kleppe, E.D.Tenn.1975, 409 F.Supp. 110](#). [United States](#)  [53\(8\)](#)

20. Deficiency judgments


A private sale, without appraisal, of secured property by debtors and payment of proceeds to Administration did not preclude under [LSA-R.S. 13:4106](#) the Administration's suit for deficiency judgment. [U.S. v. Harvey, C.A.5 \(La.\) 1979, 602 F.2d 740](#). [Mortgages](#)  [559\(3\)](#)

With respect to Small Business Administration loan transactions, a consistent application of this section in all jurisdictions is necessary to effectuate underlying congressional goals and the Administration must be allowed to recover deficiencies whenever federal law applies and there has been default on loans secured by real property. [U.S. v. Gish, C.A.9 \(Alaska\) 1977, 559 F.2d 572](#), certiorari denied [98 S.Ct. 1648, 435 U.S. 996, 56 L.Ed.2d 85](#). [Federal Courts](#)  [433](#)


Where owners of rental property receiving disaster relief loan from Small Business Administration secured by deeds of trust agreed to pay any deficiency, to permit instrument to be construed in accordance with federal law and waived any local immunity from performance of any obligation, in view of contract promises and this section and regulation, borrowers were bound to pay deficiency notwithstanding Alaska statute prohibiting recovery of deficiency after summary foreclosure pursuant to power of sale under deed of trust. [U.S. v. Gish, C.A.9 \(Alaska\) 1977, 559 F.2d 572](#), certiorari denied [98 S.Ct. 1648, 435 U.S. 996, 56 L.Ed.2d 85](#). [United States](#)  [53\(8\)](#)



Sale of mortgaged property without appraisal did not preclude United States, which brought suit after borrowers defaulted in payments on notes assigned to Small Business Administration, from obtaining deficiency judgment, although state law, if it had applied might have required different result. [U.S. v. McIntyre Veneer, Inc., M.D.La.1972, 343 F.Supp. 1095](#). [Mortgages](#)  [559\(3\)](#)


21. Attorneys


Use of original lender's counsel in liquidation of Small Business Administration loan after SBA purchased its guaranteed share of the loan did not violate statute requiring conduct of litigation by the government to be reserved to United States attorneys in light of statute expressly authorizing Administrator to utilize services of participating bank to liquidate such loans. [Gideon v. Administrator, U.S. Small Business Admin., D.Me.1986, 630 F.Supp. 822. Attorney General](#)  6

22. Agency

Since Administration employee who managed liquidation of guaranteed loan was a fully disclosed agent he could not be held liable on alleged contract to sell instruments of indebtedness owned by Administration and could not be held personally liable on theory of breach of warranty of authority that he had capacity to act for the agency; since plaintiff shareholders were charged with knowledge that he had no authority to bind the agency to a contract for sale of such assets it could not be said that employee implicitly warranted his authority. [Duncan v. Peninger, C.A.4 \(N.C.\) 1980, 624 F.2d 486, certiorari denied 101 S.Ct. 857, 449 U.S. 1078, 66 L.Ed.2d 800. United States](#)  53(5)


Since resort to Federal Register would reveal that Administration loan specialist who managed liquidation of guaranteed loan did not have authority to make alleged contract calling for sale of instruments of indebtedness owned by the agency, the government could not be held liable on a theory of unreasonableness because of agent's refusal to execute the contract, and even if cause of action for damages against the agency and an employee in his official capacity may be inferred if terms, conditions and considerations of sale are unreasonable, there is no language permitting inference of cause of action against the employee individually. [Duncan v. Peninger, C.A.4 \(N.C.\) 1980, 624 F.2d 486, certiorari denied 101 S.Ct. 857, 449 U.S. 1078, 66 L.Ed.2d 800. United States](#)  53(5); [United States](#)  53(8)


Even if bank or Small Business Administration officials had told guarantors that they would not be liable on their guaranties, guarantors were obligated to ascertain whether such officials were acting within scope of their authority and United States was neither bound nor estopped by acts of its officers or agents in entering into arrangement or agreement to do or cause to be done what law did not sanction or permit. [U.S. v. Lowell, C.A.6 \(Mich.\) 1977, 557 F.2d 70. United States](#)  53(8)

Small Business Administration (SBA), as vendor, could not be bound by its employee's acceptance of payment on real estate sales contract in the absence of evidence that his acceptance of check was authorized. [Mueller v. Abdnor, E.D.Mo.1991, 765 F.Supp. 551, affirmed in part, reversed in part 972 F.2d 931, rehearing denied. United States](#)  53(8)


23. Representations by other parties


Small Business Administration was not bound by representations allegedly made by lender's officer to borrowers indicating that the Administration never foreclosed on second deeds of trust securing Administration-guaranteed loans, in absence of evidence that Administration consented to lender's officer's representations; therefore, Ad-


ministration was entitled to recover amount due as established by the uncontradicted accounting provided by the Administration. [Benson v. U.S. Small Business Administration, C.A.9 \(Cal.\) 1981, 644 F.2d 1366. United States](#)  53(8)


Under this chapter and rules and regulations promulgated thereunder, no intent may be implied therefrom giving a civil remedy to the second lowest bidder for loss of profits or for damages suffered because of an untrue statement made by successful bidder in his certification respecting his status as a small business concern. [Royal Services, Inc. v. Maintenance, Inc., C.A.5 \(Fla.\) 1966, 361 F.2d 86. United States](#)  64.60(1)


24. Jurisdiction

Statute permitting Administrator of Small Business Administration (SBA) to sue and be sued in the United States district court conferred subject matter jurisdiction on district court over minority owned contractor's claims that SBA breached fiduciary, statutory, and regulatory duties by awarding contract with knowledge of contractor's inability to perform at profit and by failing to provide contractor with technical and managerial assistance. [In re Liberty Const., C.A.9 \(Cal.\) 1993, 9 F.3d 800, on remand 1995 WL 930131. Federal Courts](#)  974.1

Statute which allows the Small Business Administration (SBA) to be sued in any federal district court does not create federal question sufficient to confer subject matter jurisdiction over private parties joined as the SBA's codefendants, absent some other jurisdictional basis. [Victor Foods, Inc. v. Crossroads Economic Development of St. Charles County, Inc., C.A.8 \(Mo.\) 1992, 977 F.2d 1224. Federal Courts](#)  232

Federal question jurisdiction existed over interpleader action naming as defendant Administrator of the Small Business Administration (SBA); statute authorizing Administrator of the SBA to sue and be sued in any United States district court would be construed to create federal question jurisdiction over contract claims against the SBA and to extend federal jurisdiction over contract actions against the SBA for money damages in excess of \$10,000. [General Ry. Signal Co. v. Corcoran, C.A.7 \(Ill.\) 1991, 921 F.2d 700. Federal Courts](#)  232

Under "sue and be sued" clause of the Small Business Act, Texas court had subject matter jurisdiction of contract claim against SBA by buyer of collateral from SBA. [A.L.T. Corp. v. Small Business Admin., C.A.5 \(Tex.\) 1986, 801 F.2d 1451. United States](#)  53(13.1)

Dismissal due to lack of subject-matter jurisdiction was not warranted on ground that presence of Small Business Administration, the reason for federal jurisdiction, was merely "proper" and not "necessary" where the borrowers made the Administration a party to their action against the lender bank and asserted a claim against it. [Johnston v. Citizens Bank & Trust Co. of Flippin, Ark., C.A.8 \(Ark.\) 1981, 659 F.2d 865. Federal Civil Procedure](#)  1750

Where individual plaintiffs were citizens of Washington and defendant contractor was incorporated in Washington and also had its principal place of business there, diversity jurisdiction was lacking, notwithstanding that defendant equipment supplier was incorporated in California and had its principal place of business there and that

issuer of fidelity bond was incorporated in Maryland; also, district court, which had jurisdiction over claim against Small Business Administration, was not required to exercise pendent party jurisdiction over the non-Administration defendants. [Munoz v. Small Business Administration, C.A.9 \(Wash.\) 1981, 644 F.2d 1361. Federal Courts ↪ 15; Federal Courts ↪ 287](#)

Provision of this section allowing the Administrator of the Small Business Administration to sue or be sued gives district courts jurisdiction of suits against the Administrator. [Expedient Services, Inc. v. Weaver, C.A.5 \(Fla.\) 1980, 614 F.2d 56. Federal Courts ↪ 232](#)

Where suit against Administrator of the Small Business Administration originally sought to enjoin the Administration from including a particular contract in its program for disadvantaged persons and was amended to seek to set aside the agency's decision, district court lacked authority to grant the relief requested. [Expedient Services, Inc. v. Weaver, C.A.5 \(Fla.\) 1980, 614 F.2d 56. Federal Courts ↪ 243](#)

District court did not have jurisdiction to grant mandatory injunction against Administrator of Small Business Administration in suit against him by individual guarantors of lease guaranteed by Small Business Administration. [Mar v. Kleppe, C.A.10 \(Kan.\) 1975, 520 F.2d 867. United States ↪ 53\(18\)](#)


Federal district court had jurisdiction over suit by individual guarantors of lease guaranteed by Small Business Administration, brought against Administrator in his official capacity, despite fact that more than \$10,000 in damages were prayed, and suit was not required to be brought in Court of Claims. [Mar v. Kleppe, C.A.10 \(Kan.\) 1975, 520 F.2d 867. Federal Courts ↪ 1141](#)


Takings clause of Fifth Amendment to Federal Constitution, Small Business Act, and federal common law provided grants of federal question subject matter jurisdiction for suit by minority business owners against Small Business Administration (SBA) challenging SBA's agreement with defense logistics agency (DLA) establishing pricing scheme for delivery of petroleum products to government installations under minority set-aside program. [A & S Council Oil Co., Inc. v. Saiki, D.D.C.1992, 799 F.Supp. 1221, reversed 56 F.3d 234, 312 U.S.App.D.C. 270. Federal Courts ↪ 232](#)




Business owner's claims that Small Business Administration (SBA) acted arbitrarily, capriciously, and unreasonably towards him, abused its discretion, and violated his rights to due process as a result of SBA's cancellation of his disaster loan sounded in tort and could therefore only be brought under Federal Tort Claims Act; as a result, because of his failure to comply with Act, court lacked jurisdiction over claims. [Lewis v. First Bank of Shinnston, N.D.W.Va.1991, 756 F.Supp. 259, affirmed 4 F.3d 985. United States ↪ 53\(8\)](#)


Jurisdiction over action alleging breach of contract against Small Business Administration for failure to pay money due under guaranty agreement properly lay in district court, without regard to amount in controversy. [United Penn Bank v. U.S.A. Small Business Admin., M.D.Pa.1984, 603 F.Supp. 531. Federal Courts ↪ 332](#)


District Court had subject-matter jurisdiction of contractor's claim against the Administration for money judg-



ment based on alleged third-party beneficiary contract under which the Administration owed a duty directly to contractor. [Professional Const. Consultants, Inc. v. Grimes, W.D.Okla.1982, 552 F.Supp. 539. Federal Courts](#)  230



While “injunctive relief,” which has been extended to specific performance, against Small Business Administration was unavailable under “sue and be sued” immunity waiver of subsec. (b) (1) of this section, this was not jurisdictionally fatal to purchaser's action against Administration where other relief, including damages for alleged breach of contract, was sought in addition to specific performance. [Claxton v. Small Business Administration of U.S. Government, S.D.Ga.1981, 525 F.Supp. 777. United States](#)  53(14)

Under this section governing powers of Administrator to sue and be sued, district court had subject-matter jurisdiction of action brought by corporation against Administrator seeking recovery of business and development funds allegedly wrongfully withheld by Administration, but did not have jurisdiction to issue injunction or writ of mandamus ordering Administration to disburse funds. [Bayco, Inc. v. Weaver, D.C.Puerto Rico 1981, 520 F.Supp. 461. Federal Courts](#)  10.1; [Federal Courts](#)  11; [Federal Courts](#)  976

No subject-matter jurisdiction in the court exists under this chapter for action seeking to compel the Small Business Administration to grant a loan where that decision is a discretionary act vested in the Administration. [Copak Lake Development Corp. v. U.S. Government, E.D.N.Y.1980, 490 F.Supp. 386. United States](#)  82(7)



Where construction lender brought suit against surety on performance and payment bonds and, after removal to United States district court, surety joined the Administration as third-party defendant on basis of its guarantee of 90% of all losses on the bonds, and where the Administrator secured dismissal of the third-party complaint on ground, inter alia, that the court lacked subject matter jurisdiction since the claim was in excess of \$10,000, and where the surety thereafter commenced action on the same claim in state court, the Administrator was judicially estopped from asserting jurisdiction in a federal district court in support of its removal of the case to that court. [Selected Risks Ins. Co. v. Kobelinski, E.D.Pa.1976, 421 F.Supp. 431. Estoppel](#)  68(2)


Federal district court had original jurisdiction, and thus also removal jurisdiction, of action by performance and payment bond surety against Administration on its guarantee of 90 percent of all losses on the bonds, though the claim was in excess of \$10,000. [Selected Risks Ins. Co. v. Kobelinski, E.D.Pa.1976, 421 F.Supp. 431. Federal Courts](#)  979; [Removal Of Cases](#)  11


Where complaint against Small Business Administration and others alleged an amount in controversy over \$10,000 and questioned legality of loans made pursuant to this chapter, federal district court had federal question jurisdiction. [Southern Christian Leadership Conference, Inc. v. Connolly, E.D.Mich.1971, 331 F.Supp. 940. Federal Courts](#)  243; [Federal Courts](#)  356


United States district court had jurisdiction to entertain action for judgment declaring disappointed bidder, which had submitted lowest bid but did not receive contract because Small Business Administration and Size Appeals Board determined that it was not a small business concern, was actually a small business concern as


defined by this chapter. [American Elec. Co. v. U.S., D.C.Hawai'i 1967, 270 F.Supp. 689. Declaratory Judgment](#)  [274.1](#); [United States](#)  [131](#)

Court of Federal Claims does not have jurisdiction under the Tucker Act to review a decision of an administrative judge of the Small Business Administration Office Of Hearings And Appeals; proper forum for further adjudication of SBA administrative decisions lies with a United States District Court. [Red River Service Corp. v. U.S., Fed.Cl.2004, 60 Fed.Cl. 532, dismissed 110 Fed.Appx. 887, 2004 WL 2287753. Federal Courts](#)  [1139](#); [United States](#)  [53\(13.1\)](#)


Statute providing that no injunction or other similar process shall be issued against administrator of small business administration or his property did not deprive Claims Court of jurisdiction to enjoin, on preliminary basis, Department of Defense from awarding procurement contract to anyone other than apparent low bidder, even though proposed debarment of contractor resulted in SBA decision to discontinue its efforts to award bidder certificate of competency; declining to follow [Speco Corp. v. U.S., 2 Cl.Ct. 335. Sterlingwear of Boston, Inc. v. U.S., Cl.Ct.1986, 10 Cl.Ct. 644. Federal Courts](#)  [1080](#)

Under this section authorizing Small Business Administrator, an agency of the United States government, to sue in a court of record of state having general jurisdiction, Civil Court of the City of New York had no jurisdiction over suit by auctioneer for deficiency against defaulting bidder as agent for and on behalf of Administrator, since court was not a court of general jurisdiction. [Martin Fein & Co. v. Sealomatic Electronics Corp., N.Y.City Civ.Ct.1967, 290 N.Y.S.2d 808, 57 Misc.2d 187. United States](#)  [53\(13.1\)](#)

This section waives sovereign immunity and confers jurisdiction over Administration and its officials in monetary and declaratory relief actions. [Carter v. Small Business Administration, Colo.App.1977, 573 P.2d 564, 40 Colo.App. 271, certiorari denied 104 S.Ct. 711, 464 U.S. 1043, 79 L.Ed.2d 174. United States](#)  [53\(14\)](#)

Where plaintiff asserting claim against Small Business Administration designated defendant as “Small Business Administration, of Richmond, Virginia”, and plaintiff did not, in compliance with provisions of this section allowing Administrator to be sued, attempt service of process on Administrator or on Deputy Administrator or on any person designated as process agent, nor did plaintiff make service of process as authorized by applicable rules, court acquired no jurisdiction over Small Business Administration and action was properly dismissed for want of jurisdiction. [Finch v. Small Business Administration of Richmond, Va., N.C.1960, 112 S.E.2d 737, 252 N.C. 50. United States](#)  [53\(16\)](#)

25. Exhaustion of administrative remedies

Mere existence of jurisdiction to sue Administration, without more, does not obviate need to pursue administrative scheme for which parties have contracted. [Kyle Engineering Co. v. Kleppe, C.A.9 \(Cal.\) 1979, 600 F.2d 226. United States](#)  [53\(8\)](#)

26. Parties

Administrator could be sued in his official capacity by individual guarantors of lease guaranteed by Administration who contended that Administration breached its agreement to release them from their obligation if they found other tenants to take over defaulted lease. *Mar v. Kleppe*, C.A.10 (Kan.) 1975, 520 F.2d 867. *United States* ↪ 135

Where when lumber company defaulted on loan obtained from bank and the Small Business Administration, the bank assigned to the Administration a confession of judgment which defendant had executed in favor of bank and its assigns as security for loan, and where there was deficiency when judgment was entered against lumber company, the United States could as real party in interest use the confession to cause judgment to be entered in its favor against defendant despite power of the Administrator to sue in connection with the type of assignment involved. *U.S. v. Stuart*, C.A.3 (Pa.) 1968, 392 F.2d 60. *Federal Civil Procedure* ↪ 2396

National director of Small Business Administration and Administrator could not be personally liable for alleged discriminatory actions of Administration, where they had no personal involvement in such actions. *Little v. U.S.*, C.D.Ill.1980, 489 F.Supp. 1012, affirmed 645 F.2d 77. *Civil Rights* ↪ 1364

Class action against Small Business Administration was not an uncontested suit against the United States where complaint was amended to seek both declaratory and monetary relief, and where Congress had granted authority for Administrator to sue and be sued. *Pottharst v. Small Business Administration*, E.D.La.1971, 329 F.Supp. 1142. *United States* ↪ 125(31)

United States is real party in interest to bring suit arising out of official acts of the Small Business Administration. *U.S. v. Techno Fund, Inc.*, S.D.Ohio 1967, 270 F.Supp. 83. *United States* ↪ 135

Small Business Administration was not an indispensable party to suit by the United States arising out of official acts of the agency. *U.S. v. Techno Fund, Inc.*, S.D.Ohio 1967, 270 F.Supp. 83. *United States* ↪ 135

27. Standing to sue

Since shareholders of corporation which had received Administration guaranteed loans alleged no contract according them any right in property auction by agency on default but elected to stand on assertion that order of auction, i.e., bidding for all security in a lump sum, constituted a taking without adequate compensation they lacked standing to assert such claim, especially since it was clear that borrower corporation to which security interests were allegedly to be transferred were the owners. *Duncan v. Peninger*, C.A.4 (N.C.) 1980, 624 F.2d 486, certiorari denied 101 S.Ct. 857, 449 U.S. 1078, 66 L.Ed.2d 800. *Eminent Domain* ↪ 2.5

Where invitation for bid for construction of 300-unit family housing project at Air Force base specified that project had been set aside for bidding and construction by small business concern in accordance with this chapter, a small business concern which was unsuccessful bidder had standing to sue Administrator, Secretary of Air Force, contracting officer and the United States for declaratory and injunctive relief against award of con-

tract to bidder who allegedly did not qualify as small business concern. [Lloyd Wood Const. Co. v. Sandoval](#), N.D.Ala.1970, 318 F.Supp. 1167. [Declaratory Judgment](#) 🔑 292

28. Immunity--Generally

Small Business Administration (SBA) official was clothed with qualified immunity from suit arising out of SBA's denial of application for certification as contractor under program pursuant to which contracts are awarded to small businesses owned and controlled by socially and economically disadvantaged individuals, as he did not violate any of applicant's clearly established rights; he did not make any decisions based on applicant's race or handicap, as applicant alleged. [Vaughn v. U.S. Small Business Admin.](#), C.A.6 (Tenn.) 1995, 65 F.3d 1322, rehearing denied 82 F.3d 684. [United States](#) 🔑 50.10(1)

Statute granting administrator of Small Business Administration authority to sue and be sued, but which stated that no attachment, injunction, garnishment, or "other similar process," shall be issued against administrator or his property, precluded imposition of equitable lien on any funds belonging to SBA or its administrator. [J.C. Driskill, Inc. v. Abdnor](#), C.A.4 (Va.) 1990, 901 F.2d 383. [United States](#) 🔑 53(14)

Statute, which states that no injunction may be issued against Small Business Administration, protects agency from interference with internal workings by judicial orders attaching agency funds, etc., but does not provide blanket immunity from every type of injunction and does not bar judicial review of agency actions that exceed agency authority, where remedies would not interfere with internal agency operations. [Ulstein Maritime, Ltd. v. U.S.](#), C.A.1 (R.I.) 1987, 833 F.2d 1052. [Administrative Law And Procedure](#) 🔑 651; [United States](#) 🔑 53(8)

Suit against the United States, the Small Business Administration and its Administrator, brought by disaster loan applicant whose loan approval had been rescinded, was barred by sovereign immunity insofar as applicant sought injunctive relief in the nature of specific performance, but claim for monetary damages could be maintained under this section. [Romeo v. U.S.](#), C.A.5 (Miss.) 1972, 462 F.2d 1036, certiorari denied 93 S.Ct. 1361, 410 U.S. 928, 35 L.Ed.2d 589. [United States](#) 🔑 125(9); [United States](#) 🔑 125(18)

Small Business Administration agents were absolutely immune from liability in action based on allegation that SBA failed to conduct sale of collateral in commercially reasonable manner. [Shapex Corp. v. U.S.](#), M.D.Ala.1985, 629 F.Supp. 751. [United States](#) 🔑 50.5(5)

Small Business Administration was not immune from action brought against it for injunctive relief with respect to foreclosure sale. [Ricks v. U.S.](#), S.D.Ga.1976, 434 F.Supp. 1262. [United States](#) 🔑 53(14)

This section does not allow suit against the Administration seeking injunctive or mandamus type relief. [Murray v. Kleppe](#), M.D.Pa.1977, 424 F.Supp. 108. [United States](#) 🔑 53(14)

The United States must give its consent in order to be sued, even though the suit is nominally against an officer, where relief sought would actually be against the government. [Lloyd Wood Const. Co. v. Sandoval](#),

N.D.Ala.1970, 318 F.Supp. 1167. [United States](#) 125(24)

The Small Business Administration, unlike the Reconstruction Finance Corporation, is not a separate “sue and be sued” agency. [U.S. v. Skipper Smith's Marina, Inc., S.D.Fla.1968, 283 F.Supp. 408. United States](#) 53(14)

Small Business Administration (SBA), which was subject to sue-and-be-sued clause, could not escape liability that private enterprise would face in similar circumstances. [Aces & Eights Realty, LLC. v. Hartman, W.D.N.Y.2002, 2002 WL 31663515, Unreported. United States](#) 53(14)

29. ---- Waiver, immunity

“Sue and be sued” provision applicable to the Small Business Administration does not establish a broad waiver of sovereign immunity for assertion on breach of contract claim by applicant for SBA loan guaranty. [Ascot Dinner Theatre, Ltd. v. Small Business Admin., C.A.10 \(Colo.\) 1989, 887 F.2d 1024. United States](#) 53(14)


Consent for the administrator of the Small Business Administration to sue and be sued did not establish a waiver of immunity so as to permit tort action against administrator by business which was denied a SBA loan guaranty. [Ascot Dinner Theatre, Ltd. v. Small Business Admin., C.A.10 \(Colo.\) 1989, 887 F.2d 1024. United States](#) 53(14)



On counterclaim against the Administration, among others, for alleged conspiracy to destroy third-party plaintiff's business, waiver of immunity from tort liability as defined in the Federal Tort Claims Act, sections 1346(b) and 2671 et seq. of Title 28, rather than a specific waiver of sovereign immunity for suits against the Administration, was controlling as to jurisdiction. [Northridge Bank v. Community Eye Care Center, Inc., C.A.7 \(Wis.\) 1981, 655 F.2d 832. United States](#) 127(1)


By providing that the Administrator of the Small Business Administration can sue and be sued but that no attachment, injunction or garnishment shall be issued against him, Congress made a limited waiver of sovereign immunity with respect to the functions, powers and duties of the Administrator. [Romeo v. U.S., C.A.5 \(Miss.\) 1972, 462 F.2d 1036, certiorari denied 93 S.Ct. 1361, 410 U.S. 928, 35 L.Ed.2d 589. United States](#) 125(8)


Section 714 of Title 11, giving court power to enjoin until the final decree the commencement or continuation of suits against debtor, did not constitute a statutory waiver of Small Business Administration's sovereign immunity from injunction restraining its continuation of foreclosure proceedings which had been instituted after debtor's default. [U.S. v. Mel's Lockers, Inc., C.A.10 \(Utah\) 1965, 346 F.2d 168. United States](#) 53(14)


There was no basis to invoke limited waiver of sovereign immunity in Small Business Act so as to entitle subcontractor on federally funded construction project to sue Small Business Administration (SBA) for breach of contract after general contractor failed to pay subcontractor for its services, even though Department of Interior awarded contract for project to SBA under § 8(a) of Small Business Act, where subcontractor failed to assert


any facts which would establish privity of contract between it and SBA. [U.S. for Use and Benefit of Fred's Plumbing and Heating, Inc. v. Small Business Admin., D.Colo.1992, 807 F.Supp. 675. United States](#)  53(14)


Minority business owner's claims against Small Business Administration (SBA) challenging agreement between SBA and defense logistics agency (DLA) establishing pricing mechanism for delivery of petroleum products under minority set-aside program were not devoid of contractual basis so as to be subject to Federal Tort Claims Act with respect to waiver of sovereign immunity; although it appeared that SBA and its administrator breached statutory and regulatory duties by their actions, most of the SBA's responsibilities to the plaintiffs grew out of the interagency agreement itself. [A & S Council Oil Co., Inc. v. Saiki, D.D.C.1992, 799 F.Supp. 1221, reversed 56 F.3d 234, 312 U.S.App.D.C. 270. United States](#)  53(14); [United States](#)  78(5.1)

Sovereign immunity was waived by Small Business Administration (SBA) and its administrator by “sue and be sued” clause in Small Business Act with respect to suit challenging legality of agreement entered into between SBA and defense logistics agency (DLA) establishing pricing mechanism for delivery of petroleum products to various government installations under minority set-aside program of Small Business Act. [A & S Council Oil Co., Inc. v. Saiki, D.D.C.1992, 799 F.Supp. 1221, reversed 56 F.3d 234, 312 U.S.App.D.C. 270. United States](#)  53(14)

Sovereign immunity has been waived to allow Administrator of the Small Business Administration to be sued and to confer jurisdiction over federal courts to hear such suits. [Palmer v. Weaver, E.D.Pa.1981, 512 F.Supp. 281. United States](#)  53(14)


Officers of agency of United States Government acting within outer perimeters of their authority are cloaked with sovereign immunity except to extent by which it has been explicitly waived. [Murray v. Kleppe, M.D.Pa.1977, 424 F.Supp. 108. United States](#)  47


Action to foreclose mechanic's lien, which was obtained after Small Business Administration acquired title, was a “similar process” within decisional rule that statutory waiver of sovereign immunity of Administration is limited one in that no attachment, injunction, garnishment or other similar process, mesne or final, shall be issued against the Administrator or his property. [U.S. v. Joe Murray's Point Lookout, Inc., S.D.N.Y.1973, 359 F.Supp. 335. United States](#)  53(14)


The Small Business Administration, a nonincorporated federal agency, is an integral part of the United States government and has the full sovereign immunity of the United States unless such immunity has been waived by congressional action. [vonLusch v. Hoffmaster, D.C.Md.1966, 253 F.Supp. 633. See, also, Romeo v. U.S., C.A.Miss.1972, 462 F.2d 1036, certiorari denied 93 S.Ct. 1361, 410 U.S. 928, 35 L.Ed.2d 589; U.S. v. Mel's Lockers, Inc., C.A.Utah 1965, 346 F.2d 168. United States](#)  125(31)


30. Injunctions


Contractors were barred from receiving injunctive relief against the Army Corps of Engineers concerning its ad-


ministration of minority set-aside program, as Small Business Act precludes injunctive relief against Small Business Administration (SBA), and contractors could not obtain indirectly against Army what they could not obtain directly against SBA. [Enplanar, Inc. v. Marsh, C.A.5 \(La.\) 1994, 11 F.3d 1284](#), rehearing and suggestion for rehearing en banc denied [19 F.3d 17](#), certiorari denied [115 S.Ct. 312, 513 U.S. 926, 130 L.Ed.2d 275](#). [United States](#)  [53\(8\)](#)


Statutory section providing that no injunction or other similar process be issued against Small Business Administrator or his property is not intended to grant Small Business Administration any greater immunity from injunctive relief than that possessed by other governmental agencies, against whom injunctive relief may be granted on preaward contract claims under Federal Courts Improvement Act of 1982. [Cavalier Clothes, Inc. v. U.S., C.A.Fed.1987, 810 F.2d 1108](#). [Injunction](#)  [75](#)

Under provision of this section which states in pertinent part that no attachment, injunction, garnishment or other similar process shall be issued against the administrator or his property, state court was barred from issuing order temporarily restraining foreclosure of the Administration's chattel mortgage or deed of trust. [Duncan v. Furrow Auction Co., C.A.4 \(N.C.\) 1977, 564 F.2d 1107](#), certiorari denied [98 S.Ct. 2232, 436 U.S. 904, 56 L.Ed.2d 401](#). [United States](#)  [53\(8\)](#)

Where complaint of individual guarantors of Administration loan, brought against Administrator in his official capacity, prayed that order be issued directing Administrator to execute release freeing that from liability for personal endorsements action would be construed as one seeking mandatory injunction. [Mar v. Kleppe, C.A.10 \(Kan.\) 1975, 520 F.2d 867](#). [United States](#)  [53\(16\)](#)

State court was barred by this section from granting injunction restraining trustee from foreclosing deed of trust securing amounts owing United States. [Vincent v. Small Business Administration, C.A.4 \(W.Va.\) 1968, 402 F.2d 769](#). [Courts](#)  [507](#)


Section of the Small Business Act requiring contracting agency to accept certification of responsibility of a bidder by the Small Business Administration, and section of the Act prohibiting courts from issuing injunctions against the SBA administrator, did not preclude declaratory and injunctive relief requested by disappointed bidders on navy contract, notwithstanding claim that any injunction which would issue against contracting agency was in actuality against the SBA which certified successful bidder. [Ulstein Maritime, Ltd. v. U.S., D.R.I.1986, 646 F.Supp. 720](#), affirmed [833 F.2d 1052](#). [Injunction](#)  [86](#)


Injunction may not be issued against the Administrator of the Small Business Administration because the court has no subject-matter jurisdiction over such an order. [Palmer v. Weaver, E.D.Pa.1981, 512 F.Supp. 281](#). [Injunction](#)  [75](#)



Suit against Small Business Administration and the Secretary of the Department of Defense, brought by brewing company and black minority businessmen for violation of the Civil Rights Act of 1964, § 1983 et seq. of Title 42, was barred by sovereign immunity insofar as the action sought injunctive relief to compel the Administrator


in the exercise of his discretion. [Peoples Brewing Co. v. Kleppe, E.D.Wis.1973, 360 F.Supp. 729. United States](#)  [125\(28.1\)](#)


This section barred injunctive relief against Administrator of Small Business Administration. [Analytical Systems Corp. v. Small Business Administration, D.C.Mass.1972, 346 F.Supp. 1149.](#)

Plaintiffs seeking to enjoin Small Business Administration from awarding contract to a corporation without competitive bids failed to show reasonable probability of proving their contention that the award would violate the Administration's own regulations so as to justify granting of preliminary injunctive relief. [Analytical Systems Corp. v. Small Business Administration, D.C.Mass.1972, 346 F.Supp. 1149. Injunction](#)  [147](#)


When Small Business Administration Administrator acts beyond scope of his authority, he is subject to injunction. [Dubrow v. Small Business Administration, C.D.Cal.1972, 345 F.Supp. 4. Injunction](#)  [75](#)


Provision of Administrative Procedure Act, §§ 551 et seq., and 701 et seq. of Title 5, for issuance of process to postpone effective date of agency action or to preserve status or rights pending conclusion of review proceedings in order to prevent irreparable injury did not override express language in this chapter that no injunction, or other similar process, shall be issued against the Administrator or his property. [Lloyd Wood Const. Co. v. Sandoval, N.D.Ala.1970, 318 F.Supp. 1167. Administrative Law And Procedure](#)  [675](#); [United States](#)  [53\(8\)](#)


Plaintiffs were precluded by sovereign immunity from obtaining injunction against Small Business Administration and its Administrator to require that they rescind their requirement that plaintiffs secure a 100% performance bond and a labor and materials payment bond as a condition of grant of loan to plaintiffs where terms and conditions under which Administration made loans were agency actions committed by law to agency discretion and as such were excepted from statute providing for judicial review of agency actions. [vonLusch v. Hoffmaster, D.C.Md.1966, 253 F.Supp. 633. United States](#)  [125\(31\)](#)


Injunction sought against Small Business Administrator by small business contractor whose low bid was rejected as nonresponsible, and who sought to restrain various officials of procuring agency, the contracting officer, and subordinates from awarding the contract to any other bidder was not in violation of this section, providing that no attachment, injunction, garnishment, or other similar process be issued against Administrator or his property. [Related Industries, Inc. v. U.S., Cl.Ct.1983, 2 Cl.Ct. 517. Injunction](#)  [86](#)

31. Declaratory relief


Although part of purchaser's complaint seeking damages for alleged breach of contract in sale of certain parcel by Small Business Administration through its agent at public auction sought relief in form of injunction, district court could nevertheless construe request as one for declaratory relief, thereby bringing claim within ambit of "sue and be sued" immunity waiver provision. [Claxton v. Small Business Administration of U.S. Government, S.D.Ga.1981, 525 F.Supp. 777. United States](#)  [53\(14\)](#)



Where action framed as one for declaratory relief against the Administrator of the Small Business Administration is equivalent to the injunctive relief barred by this section, the declaratory relief is also unavailable. [Palmer v. Weaver, E.D.Pa.1981, 512 F.Supp. 281. Declaratory Judgment](#)  203

Request for declaration that Small Business Administration had failed to give loan application request the consideration required by law was a true request for declaratory relief and not a disguised prayer for injunctive relief, so that court had jurisdiction over the complaint. [Palmer v. Weaver, E.D.Pa.1981, 512 F.Supp. 281. Declaratory Judgment](#)  203

Under this chapter, plaintiff could assert his claims for declaratory relief as respects allegedly improper administrative decision of Small Business Administration. [Little v. U.S., C.D.Ill.1980, 489 F.Supp. 1012, affirmed 645 F.2d 77. Declaratory Judgment](#)  203


32. Mandamus

The acquiring of contracts with other federal agencies to supply goods and services of small businesses was act committed by this section to the discretion of the Small Business Administrator and federal court could not compel the Administrator to take action with respect to obtaining contracts for brewing company owned by black minority businessmen for the sale of beer to governmental agencies. [Peoples Brewing Co. v. Kleppe, E.D.Wis.1973, 360 F.Supp. 729. United States](#)  53(18)

Obtaining of contracts for small businesses with governmental agencies was discretionary matter for Administrators of Small Business Administration and the exercise of that discretion could not be compelled by mandamus nor could black businessmen and their brewing company recover damages under the Federal Tort Claims Act, §§ 1346(b) and 2671 et seq. of Title 28, for alleged discrimination in obtaining contract for the sale of beer to governmental agencies. [Peoples Brewing Co. v. Kleppe, E.D.Wis.1973, 360 F.Supp. 729. Mandamus](#)  73(1); [United States](#)  78(12)

This section did not give district court jurisdiction to compel officials to grant a loan. [Simpkins v. Davidson, S.D.N.Y.1969, 302 F.Supp. 456.](#)

33. Subpoenas

Where Small Business Administration and its officials were not parties to antitrust suit in which disclosure was sought and Assistant Administrator withheld authorization for local officials to disclose, the local officials were privileged to refuse to respond to subpoenas duces tecum issued by the district court. [Saunders v. Great Western Sugar Co., C.A.10 \(Colo.\) 1968, 396 F.2d 794. Witnesses](#)  16

34. Damages liability

Federal officers cannot be held personally liable in damages for an act committed within the general scope of their official authority and in performance of their official duties. [Romeo v. U.S., C.A.5 \(Miss.\) 1972, 462 F.2d](#)

1036, certiorari denied 93 S.Ct. 1361, 410 U.S. 928, 35 L.Ed.2d 589. [United States](#) ↪ 50.1

Prospective purchaser was entitled to recover from Small Business Administration (SBA) as vendor \$16,000 in damages corresponding to funds he expended in reliance on representations of SBA employee that real estate contract was valid; prospective purchaser expended \$1,000 to maintain property and made \$15,000 in payments to the SBA in reliance on representations of employee. [Mueller v. Abdnor, E.D.Mo.1991, 765 F.Supp. 551](#), affirmed in part , reversed in part 972 F.2d 931, rehearing denied. [United States](#) ↪ 53(18)

Money damages are available in suit against Small Business Administration. [Gilford v. U.S., D.C.Colo.1983, 573 F.Supp. 96](#). [United States](#) ↪ 142

As long as Administrator acts within the outer limits of his line of duty, he is immune from damage liability. [Capital Refrigeration, Inc. v. U.S., M.D.Pa.1973, 375 F.Supp. 462](#). [United States](#) ↪ 50.5(5)

35. Attorney fees

Defense contractor that successfully challenged its termination from Small Business Administration's (SBA's) procurement assistance program was not entitled to recover interest on award of attorney fees, made pursuant to the Equal Access to Justice Act (EAJA), from date contractor incurred fees until date of award, despite delay of several years and SBA's statutory authority to "sue and be sued." [Oklahoma Aerotronics, Inc. v. U.S., C.A.D.C.1991, 943 F.2d 1344, 291 U.S.App.D.C. 401](#). [United States](#) ↪ 147(12)

In action in which Small Business Administration was joined as a third-party defendant, awarding attorney fees against Small Business Administration was not statutorily authorized. [Zimmerman v. Cook, Colo.App.1982, 651 P.2d 910](#). [United States](#) ↪ 53(19)

36. Compromise of claims

Only Small Business Administration Administrator has authority to compromise agency claims and an administrative contracting officer has no authority to compromise claims of any governmental agency other than Department of Defense. [U.S. v. Gilmore, C.A.10 \(Kan.\) 1983, 698 F.2d 1095](#). [United States](#) ↪ 53(8)

37. Summary judgment

Evidence that bank accepted, in satisfaction of previous loans, payments of \$86,500 from borrower which were not reflected in settlement sheet bank had filed with Small Business Administration (SBA) raised genuine issue of material fact as to whether bank materially breached guaranty agreement's provision requiring bank to close and disburse each loan in accordance with terms and conditions of approved loan authorization, precluding summary judgment in Government's action against bank to recover allegedly improperly paid SBA loan guaranty. [U.S. v. First National Bank of Cicero, C.A.7 \(Ill.\) 1992, 957 F.2d 1362](#). [Federal Civil Procedure](#) ↪ 2487

Genuine issues of material fact existed, precluding summary judgment against guarantors under Indiana law, on

whether Small Business Administration (SBA) should have been equitably estopped from seeking to hold guarantors liable after guarantors stopped forwarding rental payments directly to SBA for premises that were leased from borrower and SBA's only immediate response was to inform guarantors that they were no longer under any obligation to SBA; it could not be said as matter of law that commercial loan specialist's statements to guarantor, if unauthorized, could not have risen above level of mere negligence. [U.S. v. Fitzgerald, C.A.7 \(Ind.\) 1991, 938 F.2d 792. Federal Civil Procedure ↪ 2492](#)

Issue as to whether officials of Small Business Administration had given consideration required by law to plaintiff's application for a loan was presented, precluding summary judgment for officials. [Simpkins v. Davidson, S.D.N.Y.1969, 302 F.Supp. 456. Federal Civil Procedure ↪ 2481](#)

38. Evidence

Evidence supported contracting officer's finding, made when Small Business Administration had not made timely ruling on protest that lowest bidder was not a qualified small business, that any further delay in procurement action on the invitation for bids on Alaska road building contract would be disadvantageous to the government. [Mid-West Const., Limited v. U.S., Ct.Cl.1967, 387 F.2d 957, 181 Ct.Cl. 774. United States ↪ 64.15](#)

Where United States sued guarantor for amount allegedly due, amount was denied under oath, and United States did not prove the net amount, it could not shift to guarantor the responsibility for government's offering a part only of record in Louisiana default judgment proceeding, which part, to extent it had any evidentiary effect against guarantor, showed only the gross amount of principal's debt and nothing as to net unpaid balance. [Friedrick v. U.S., C.A.5 \(Tex.\) 1967, 386 F.2d 481. Guaranty ↪ 89](#)

Evidence established that trustee received fair market price for personal property sold at trust deed foreclosure sale, validity of which was not attacked by small business loan borrowers until about a year after sale took place and about two years after borrowers stopped operating theater in which the personal property was used. [U.S. v. Gaskins, E.D.N.C.1964, 232 F.Supp. 667, affirmed 335 F.2d 835. United States ↪ 53\(17\)](#)

39. Estoppel

As successor to lending bank's interest in loan transaction with small business corporation, Small Business Administration was entitled to benefit of terms which bank had negotiated, even though Administration officer might have indicated that the Administration might have consented to other terms in some hypothetical transaction where no future advances clause already created a lien on the property, and where language of instruments unambiguously established that property secured line of credit, Administration was as much entitled to that security as the bank was, and was not subject to "estoppel defense." [U.S. v. Vahlco Corp., C.A.5 \(Tex.\) 1983, 720 F.2d 885. Estoppel ↪ 62.2\(4\); United States ↪ 53\(8\)](#)

Small Business Administration was not estopped from recovering on note signed by borrowers in connection with Administration-guaranteed loan as a result of representations allegedly made by lender's officer to the effect that the Administration never foreclosed on second deeds of trust, since security agreement signed by bor-

rowers specifically warned them that security would be in jeopardy in the event of default. [Benson v. U.S. Small Business Administration, C.A.9 \(Cal.\) 1981, 644 F.2d 1366. United States ↪ 53\(8\)](#)

Waiver of sovereign immunity for contractual actions against Small Business Administration (SBA) does not apply to action founded upon promissory estoppel, as promissory estoppel is equitable remedy rather than legal remedy; as a result, business owner's action founded upon promissory estoppel failed to state claim. [Lewis v. First Bank of Shinnston, N.D.W.Va.1991, 756 F.Supp. 259, affirmed 4 F.3d 985. United States ↪ 53\(8\)](#)

40. Waiver

Small Business Administration lacked authority to waive without adequate consideration requirement that made its obligation to purchase certain loan conditional upon bank lender's payment of guaranty fee to it prior to default or likelihood thereof, and thus Small Business Administration did not waive requirement of timely payment, even though it did not terminate guaranty when bank failed to make payment within five days of initial loan disbursement as provided in loan guaranty agreement and it accepted bank's ultimate payment of fee after loan went into default but it was only equitable that government be ordered to refund guaranty fee paid by bank. [Union Nat. Bank of Chicago v. Weaver, C.A.7 \(Ill.\) 1979, 604 F.2d 543. Guaranty ↪ 42\(1\)](#)

If guaranty fee payment was made by bank lender to Small Business Administration prior to default or likelihood thereof, the Small Business Administration had authority to waive requirement in loan guaranty agreement which made its obligation to purchase certain loan conditional upon bank's payment of guaranty fee within five days of initial loan disbursement, because waiver did not alter contract to government's detriment, nor did it affect any material rights that had accrued to government. [Union Nat. Bank of Chicago v. Weaver, C.A.7 \(Ill.\) 1979, 604 F.2d 543. Guaranty ↪ 42\(1\)](#)

Corporation and unconditional guarantors of promissory note executed by corporation pursuant to loan agreement with Small Business Administration did not waive right to bring claim against SBA based upon alleged commercially unreasonable sale of collateral. [Shapex Corp. v. U.S., M.D.Ala.1985, 629 F.Supp. 751. Estoppel ↪ 62.2\(4\)](#)

41. Laches

Fact that plaintiffs' loan documents had been destroyed was not enough to justify dismissal for laches of action against Small Business Administration, particularly where delay in bringing suit was due to near financial ruin brought about by Administration's failure to grant loan, leaving plaintiffs unable to afford attorney. [Gilford v. U.S., D.C.Colo.1983, 573 F.Supp. 96. United States ↪ 133](#)

Execution satisfying judgment entered in favor of United States on loan issued by the Small Business Administration would not be stayed on theory that disbursements at time of loan in 1971 which left borrowers with only \$1,700 instead of \$74,000 for operating expenses was breach of contract and that allocation of \$10,000 was wrongfully made in 1974 to bank loan instead of a Small Business Administration loan, in light of laches of borrowers in failing to protest until attempted execution in 1977. [U.S. v. Gibbs, W.D.Pa.1977, 432 F.Supp. 1043.](#)

[United States](#) 🔑 145

Even if trust deed foreclosure sale had been invalid, small business loan borrowers who did not elect to attend sale or have someone else represent them there and who waited until about a year after the sale to attack its validity were guilty of laches and were estopped from attacking its validity. [U.S. v. Gaskins](#), E.D.N.C.1964, 232 F.Supp. 667, affirmed 335 F.2d 835. [United States](#) 🔑 53(8)

42. Moot questions

Where, although government construction project was well underway following award of contract to second lowest bidder, there remained question whether trial court had erred in setting aside initial award of contract to lowest bidder, and lowest bidder's suit for bid preparation costs was pending in Court of Claims and there remained hypothetical though unlikely possibility that Air Force might terminate contract and reaward it, appeal in lowest bidder's action for injunctive and declaratory relief was not moot. [Allen M. Campbell Co. General Contractors, Inc. v. Lloyd Wood Construction Co.](#), C.A.5 (Ala.) 1971, 446 F.2d 261. [Federal Courts](#) 🔑 724

43. Review

Where guaranty agreements were placed in evidence and interpreting language of them was integral part of court's task in rendering decision, court's interpretation of agreements in manner and on basis not urged by either party was not reversible error, but rather was within court's discretion. [U.S. v. Beardslee](#), C.A.6 (Mich.) 1977, 562 F.2d 1016, certiorari denied 99 S.Ct. 113, 439 U.S. 833, 58 L.Ed.2d 128. [Federal Courts](#) 🔑 755

On appeal from judgment dismissing complaint by government for a deficiency judgment against all defendants for the unpaid balance of four loans secured by a mortgage obligation obtained from Small Business Administration, evidence was to be viewed in light most favorable to defendants as prevailing parties. [U.S. v. Hastings Motor Truck Co.](#), C.A.8 (Neb.) 1972, 460 F.2d 1159. [Federal Courts](#) 🔑 797

Where administrative agency's interpretation of its rule obviously incorporates quasi technical administrative expertise and familiarity with situation acquired by law and experience with intricacies inherent in comprehensive regulatory scheme, judges should be particularly reluctant to substitute their personal assessment of meaning of regulation for considered judgment of agency, and if agency interpretation is merely one of several reasonable alternatives, it must stand even though it may not appear as reasonable as some other. [Allen M. Campbell Co. General Contractors, Inc. v. Lloyd Wood Construction Co.](#), C.A.5 (Ala.) 1971, 446 F.2d 261. [Administrative Law And Procedure](#) 🔑 413

Substantial basis in record upheld action of Small Business Administration, applying its own rules and following long-established practice, in twice finding government contractor to have satisfied size requirement of Small Business Administration based upon "completed contracts" accounting method, and district court erred in holding that the "completed contracts" method was unacceptable for size computation. [Allen M. Campbell Co. General Contractors, Inc. v. Lloyd Wood Construction Co.](#), C.A.5 (Ala.) 1971, 446 F.2d 261. [United States](#) 🔑 64.15

Where United States sued to foreclose its mortgages securing loan by Small Business Administration and bid in for \$43,000 but court had held fair value to be \$108,000 and gave government option of moving for second sale with upset price of that amount or having judgment credited therewith, even if being permitted to credit upset price was benefit to government, government was not precluded from appealing other portions of judgment relating to \$30,000 credit for storm loss to property and to offsetting of interest. [U.S. v. Newton Livestock Auction Market, Inc., C.A.10 \(Kan.\) 1964, 336 F.2d 673. Federal Courts ↪ 544](#)

Applicable standard of review of a loan denial by the Small Business Administration is whether the agency action was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. [Palmer v. Weaver, E.D.Pa.1981, 512 F.Supp. 281. United States ↪ 53\(8\)](#)

Judicial review of decision of the Small Business Administration with respect to amount of disaster loan to be allowed plaintiff after severe storms had caused extensive flash flood in area of plaintiff's real property was not reviewable under the Administrative Procedure Act, sections 551 et seq. and 701 et seq. of Title 5, and, though Congress expressly waived the sovereign immunity of the Administration under this chapter and consented to sue, injunctive or any similar relief was precluded by this chapter, and relief sought by plaintiff, namely, substitution of his estimate of flood damage incurred for that of the Administration, was in nature of an injunction, so that district court was without subject matter jurisdiction to grant relief. [Copake Lake Development Corp. v. U.S. Government, E.D.N.Y.1980, 490 F.Supp. 386. United States ↪ 82\(7\)](#)

This chapter does not contain any clear or convincing provision indicating that the Administrator's discretionary actions are precluded from judicial review. [Duke City Lumber Co. v. Butz, D.C.D.C.1974, 382 F.Supp. 362, adopted in part 539 F.2d 220, 176 U.S.App.D.C. 218, certiorari denied 97 S.Ct. 737, 429 U.S. 1039, 50 L.Ed.2d 751. United States ↪ 53\(8\)](#)

Court can review a decision of the Small Business Administration only if decision is arbitrary, capricious or erroneous as matter of law; it is not enough that court might reach contrary decision. [Raitport v. Small Business Administration U.S. Government, E.D.Pa.1974, 380 F.Supp. 1059. United States ↪ 53\(8\)](#)

It was intent of Administrative Procedure Act, §§ 551 et seq. and 701 et seq. of Title 5, to accord review to such aggrieved persons as those aggrieved by agency action taken under this chapter. [Southern Christian Leadership Conference, Inc. v. Connolly, E.D.Mich.1971, 331 F.Supp. 940. Administrative Law And Procedure ↪ 668; United States ↪ 53\(8\)](#)

Administrator has power to make determinations as to whether business qualifies as small business concern within this chapter and the determination must be upheld by the courts unless determination is arbitrary, capricious, in excess of statutory authority, erroneous as matter of law, or not supported by substantial evidence, and it is not enough that the reviewing court might reach a different result in making original determination. [Lloyd Wood Const. Co. v. Sandoval, N.D.Ala.1970, 318 F.Supp. 1167. United States ↪ 53\(8\); United States ↪ 53\(18\)](#)

Small Business Administration's determination that bidder on electrical construction contract available only to small business concerns was not a small business concern was to be upheld unless Administration's findings were erroneous or arbitrary and contrary to law; that district court might reach different result if making an original determination was not enough. [American Elec. Co. v. U.S., D.C.Hawai'i 1967, 270 F.Supp. 689. United States ↩ 64.60\(3.1\)](#)

15 U.S.C.A. § 634, 15 USCA § 634

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