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* This table of contents is prepared by the editor of the Legislation Handbook and is not a part of the Small Business Act.

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SMALL BUSINESS ACT

This compilation includes
PL 115-232, enacted 8/13/18.

SMALL BUSINESS ACT

(Public Law 85-536,¹ as amended)

Citation.

§ 1. This Act may be cited as the “Small Business Act.”

§ 2. (a) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.²

Policy of
Congress.
15 USC 631.

(b) (1)³ It is the declared policy of the Congress that the Federal Government, through the Administrator of⁴ the Small Business Administration, acting through the Associate Administrator for International Trade and in cooperation with the Department of Commerce and other relevant State and Federal agencies, should aid and assist small businesses, as defined under this Act, to increase their ability to compete in international markets by—

¹Approved July 18, 1958 (72 Stat. 384).

²The subcontracts of contractors performing work or rendering services under Government procurement contracts were included within the policy statements of § 2(a) by § 6 of P.L. 87-305, approved Sept. 26, 1961 (75 Stat. 667).

³New paragraphs 2(b)(1) and (2) added by § 8002 of P.L. 100-418, approved August 23, 1988 (102 Stat. 1553). Former subsections 2(b) through 2(e) redesignated as 2(c) through 2(f), respectively.

⁴ Reference to the Administrator added by § 1203(d)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2522). Section 1203 (d)(2) added the reference to the Associate Administrator for International Trade. Section 1203(e) of P.L. 111-240 provides:

(e) IMPLEMENTATION DATE.—Not later than 90 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall appoint an Associate Administrator for International Trade under section 22(a) of the Small Business Act (15 U.S.C. 649(a)), as added by this section.

- (A) enhancing their ability to export;
- (B) facilitating technology transfers;
- (C) enhancing their ability to compete effectively and efficiently against imports;
- (D) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;
- (E) disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and
- (F) ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

(2) The Congress recognizes that the Department of Commerce is the principal Federal agency for trade development and export promotion and that the Department of Commerce and the Small Business Administration work together to advance joint interests. It is the purpose of this Act to enhance, not alter, their respective roles.

(c)⁵ It is the declared policy of the Congress that the Government, through the Small Business Administration, should aid and assist small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this Act are also to be used to assist such concerns.

(d) (1)⁶ The assistance programs authorized by sections 7(i) and 7(j) of this Act are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

(2)⁷ (A) With respect to the programs authorized by section 7(j) of this Act, the Congress finds—

⁵Former subsection 2(b), now 2(c) - see footnote 3 - added by § 112(a) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663). See § 18(b) of this Act for changes made by § 119(c) of P.L. 96-302, approved July 2, 1980 (94 Stat. 833), which affect disaster loan assistance to agricultural enterprises.

⁶Subsection 2(d) added by § 2(a)(1) of P.L. 93-386, approved August 23, 1974 (88 Stat. 742).

⁷Paragraph 2(d)(2) added by § 203 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

(i) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

(ii) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership;

(iii) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

(iv) that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance.

(v) that the power to let⁸ Federal contracts pursuant to section 8(a) of the Small Business Act can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

(vi) that the procurement authority under section 8(a) of the Small Business Act shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

(B) It is therefore the purpose of the programs authorized by section 7(j) of this Act to—

(i) foster business ownership and development by individuals in groups that own and control little productive capital; and

(ii) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.⁹

⁸Phrase “sole source” deleted by subsection 204(b) of P.L. 100-656, approved Nov. 15, 1988 (102 Stat. 3859).

⁹The phrase “and development” in section 2(d)(2)(B)(i) and “in the marketplace” in section 2(d)(2)(B)(ii) added by § 204(a) of P.L. 100-656, approved Nov. 15, 1988 (102 Stat. 3859).

(e)¹⁰ Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes, and small-business concerns which are displaced as a result of federally aided construction programs.¹¹

(f) (1) With respect to the Administration's business development programs the Congress finds—

(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Indian tribes,¹² Asian Pacific Americans,¹³ Native Hawaiian Organizations,¹⁴ and other minorities;

(D) that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(E) that such conditions can be improved by providing the maximum practicable opportunity for the development of small business concerns owned by members of socially and economically disadvantaged groups;

(F) that such development can be materially advanced through procurement by the United States of articles, equipment, supplies, services, materials, and construction work from such concerns; and

(G) that such procurements also benefit the United States by encouraging the expansion of suppliers for such procurements, thereby encouraging competition among such suppliers and promoting economy in such procurements.

¹⁰Formerly § 2(b). Redesignated as § 2(c) by § 2(a)(1) of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742). Redesignated as § 2(d) by § 112 (a) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663). For redesignation as § 2(e) see footnote 3, supra.

¹¹The last 15 words of this subsection (previously § 2(b)), added by § 305(b) of P.L. 87-70, the Housing Act of 1961, approved June 30, 1961 (75 Stat. 167). These words rendered moot by repeal of §§ 7(b)(3) through (9) by § 1913(a) of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357).

¹²“Indian tribes” added by § 18015(a) of P.L. 99-272, approved April 7, 1986 (100 Stat. 370).

¹³“Asian Pacific Americans” added by § 118(a) of P.L. 96-302, approved July 2, 1980 (94 Stat. 833). Section 118(c)(1) of P.L. 96-302 further provides that this provision shall apply as if included in § 201 of P.L. 95-507, which added former § 2(e), now § 2(f), to the Small Business Act.

¹⁴Section 207(b) of P.L. 100-656, approved Nov. 15, 1988 (102 Stat. 3861), added “Native Hawaiian Organizations.”

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(2) It is, therefore, the purpose of section 8(a) to—

(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and management assistance as may be necessary; and

(C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.¹⁵

(g)¹⁶ In administering the disaster loan program authorized by section 7 of this Act, to the maximum extent possible, the Administration shall provide assistance and counseling to disaster victims in filing applications, providing information relevant to loan processing, and in loan closing and prompt disbursement of loan proceeds and shall give the disaster program a high priority in allocating funds for administrative expenses.

(h) (1)¹⁷ With respect to the programs and activities authorized by this Act, the Congress finds that—

(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

§ 2(h)(1)(D) to
§ 2(j)

(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

¹⁵Former subsection (e) (now (f) - see footnote 3) added by § 201 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1757). Subsection 2(f)(2) rewritten by subsection 204(a)(2) of P.L. 100-656, approved Nov. 15, 1988 (102 Stat. 3859).

¹⁶Subsection 2(g) added by § 118 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2999).

¹⁷Subsection 2(h) added by § 101 of P.L. 100-533, the Women's Business Ownership Act of 1988, approved Oct. 25, 1988 (102 Stat. 2689).

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(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

(2) It is, therefore, the purpose of those programs and activities conducted under the authority of this Act that assist women entrepreneurs to—

(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

(B) remove, insofar as possible, the discriminatory barriers that are encountered by women in accessing capital and other factors of production; and

(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.

(i)¹⁸ PROHIBITION ON THE USE OF FUNDS FOR INDIVIDUALS NOT LAWFULLY WITHIN THE UNITED STATES.—None of the funds made available pursuant to this Act may be used to provide any direct benefit or assistance to any individual in the United States if the Administrator or the official to which the funds are made available receives notification that the individual is not lawfully within the United States.

§ 2(j)(1) to
§ 3(a)(1)
Contract
bundling.

(j)¹⁹ CONTRACT BUNDLING.—In complying with the statement of congressional policy expressed in subsection (a), relating to fostering the participation of small business concerns in the contracting opportunities of the Government, each Federal agency, to the maximum extent practicable, shall—

¹⁸Subsection 2(i) added by § 609 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4204).

¹⁹ Subsection 2(j) added by § 411 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2617).

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- (1) comply with congressional intent to foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;
- (2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to their participation; and
- (3) avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.

§ 3²⁰ DEFINITIONS.

Definitions.
15 USC 632.

(a) SMALL BUSINESS CONCERNS.—

(1) IN GENERAL.—For the purposes of this Act, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries,²¹ shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation.²²

²⁰Section 3 redesignated § 3(a) by § 224(b) of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1757); redesignated § 3(a)(1) by § 921(f)(1) of P.L. 99-661, approved Nov. 14, 1986. Headings added by § 1661 of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2083).

²¹The clause beginning with “including” added by § 112(b) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

²²Provision defining agricultural enterprise as small business concern if it has annual receipts not in excess of \$500,000 added by § 18016 of P.L. 99-272, approved April 7, 1986 (100 Stat. 371). The amount was changed to \$750,000 by § 806(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). That proviso was deleted by § 1831(b) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2658). Text of deleted proviso is reprinted below:

Provided, That notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of \$750,000.

Section 1831(c) of P.L. 114-328 provides:

(c) UPDATED SIZE STANDARDS.—Size standards established for agricultural enterprises under section 3(a) of the Small Business Act shall be subject to the rolling review procedures established under section 1344(a) of the Small Business Jobs Act of 2010.

Language following this footnote signal was deleted by § 222(a) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 999). The deleted language is reprinted below:

In addition to the foregoing criteria the Administrator, in making a detailed definition may use these criteria, among others: Numbers of employees and dollar volume of business: Provided, That the Administration shall not promulgate, amend, or rescind any rule or regulation with respect to size standards prior to March 31, 1981. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this Act, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.

Section 1344 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2545) provides:

(2)²³ ESTABLISHMENT OF SIZE STANDARDS.—

Establishment of
size standards.

(A) IN GENERAL.—In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards by which a business concern may be determined to be a small business concern for the purposes of this Act or any other Act.

§ 3(a)(2)(B) to
§ 3(a)(4)(A)

(B) ADDITIONAL CRITERIA.—The standards described in paragraph (1) may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

SEC. 1344. UPDATED SIZE STANDARDS.

(a) ROLLING REVIEW.—

(1) IN GENERAL.—The Administrator shall—

(A) during the 18-month period beginning on the date of enactment of this Act, and during every 18-month period thereafter, conduct a detailed review of not less than 1/3 of the size standards for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)), which shall include holding not less than 2 public forums located in different geographic regions of the United States;

(B) after completing each review under subparagraph (A) make appropriate adjustments to the size standards established under section 3(a)(2) of the Small Business Act to reflect market conditions;

(C) make publicly available—

(i) information regarding the factors evaluated as part of each review conducted under subparagraph (A); and

(ii) information regarding the criteria used for any revised size standards promulgated under subparagraph (B); and
(D) not later than 30 days after the date on which the Administrator completes each review under subparagraph (A), submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives and make publicly available a report regarding the review, including why the Administrator—

(i) used the factors and criteria described in subparagraph (C); and

(ii) adjusted or did not adjust each size standard that was reviewed under the review.

(2) COMPLETE REVIEW OF SIZE STANDARDS.—The Administrator shall ensure that each size standard for small business concerns established under section 3(a)(2) of the Small Business Act (15 U.S.C. 632(a)(2)) is reviewed under paragraph (1) not less frequently than once every 5 years.

(b) RULES.—Not later than 1 year after the date of enactment of this Act, the Administrator shall promulgate rules for conducting the reviews required under subsection (a).

²³Subsection 3(a)(2) rewritten by § 301 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4187). Text of former subsection 3(a)(2), added by § 222(a) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 999), reprinted below:

(2) In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards (by number of employees or dollar volume of business) by which a business concern is to be recognized as a small business concern for the purposes of this Act or any other Act. Unless specifically authorized by statute, the Secretary of a department or the head of a Federal agency may not prescribe for the use of such department or agency a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(A) is being proposed after an opportunity for public notice and comment;

(B) provides for determining, over a period of not less than 3 years—

(i) the size of a manufacturing concern on the basis of the number of its employees during that period; and

(ii) the size of a concern providing services on basis of the average gross receipts of the concern during that period;
and

(C) is approved by the Administrator.

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(C) REQUIREMENTS.—Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

(i) is proposed after an opportunity for public notice and comment;

(ii) provides for determining—

(I) the size of a manufacturing concern as measured by the manufacturing concern's average employment based upon employment during each of the manufacturing concern's pay periods for the preceding 12 months;

(II) the size of a business concern providing services on the basis of the annual average gross receipts of the business concern over a period of not less than 3 years;

(III) the size of other business concerns on the basis of data over a period of not less than 3 years; or

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3)²⁴ VARIATION BY INDUSTRY AND CONSIDERATION OF OTHER FACTORS.—When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

(4)²⁵ EXCLUSION OF CERTAIN SECURITY EXPENSES FROM CONSIDERATION FOR PURPOSE OF SMALL BUSINESS SIZE STANDARDS.—

(A) DETERMINATION REQUIRED.—Not later than 30 days the date of enactment of this paragraph, the Administrator shall review the application § 3(a)(4)(B) to § 3(a)(5)(B)(i) e standards established pursuant to paragraph (2) to small business concerns that are performing contracts in qualified areas and determine whether it would be fair and appropriate to exclude from consideration in the average annual gross receipts of such small business concerns any payments made to such small business concerns by Federal agencies to reimburse such small business concerns for the cost of subcontracts entered for the sole purpose of providing security services in a qualified area.

²⁴ Heading added by § 1661(2)(C) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2083).

²⁵ New paragraph 3(a)(4) added by § 844 of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3389).

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(B) ACTION REQUIRED.—not later than 60 days after the date of enactment of this paragraph, the Administrator shall either—

(i) initiate an adjustment to the size standards, as described in subparagraph (A), if the Administrator determines that such an adjustment would be fair and appropriate; or

(ii) provide a report to the Committee on Small Business Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives explaining in detail the basis for the determination by the Administrator that such an adjustment would not be fair and appropriate.

(C) QUALIFIED AREAS.—In this paragraph, the term “qualified area” means— “Qualified area.”

(i) Iraq,

(ii) Afghanistan, and

(iii) any foreign country which included a combat zone, as that term is defined in section 112(c)(2) of the Internal Revenue Code of 1986, at the time of performance of the relevant Federal contract or subcontract.

(5)²⁶ ALTERNATIVE SIZE STANDARD.

(A) IN GENERAL.—The Administrator shall establish an alternative size standard for applicants for business loans under section 7(a) and applicants for development company loans under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), that uses maximum tangible net worth and average net income as an alternative to the use of industry standards.

(B) INTERIM RULE.—Until the date on which the alternative size standard established under subparagraph (A) is in effect, an applicant for a business loan under section 7(a) or an applicant for a development company loan under title V of the Small Business Investment Act of 1958 may be eligible for such a loan if—

(i) the maximum tangible net worth of the applicant is not more than \$15,000,000; and § 3(a)(5)(B)(ii) to § 3(a)(9)(B)

(ii) the average net income after Federal income taxes (excluding any carry-over losses) of the applicant for the 2 full fiscal years before the date of the application is not more than \$5,000,000.

²⁶ New paragraph 3(a)(5) added by § 1116 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2509).

(6)²⁷ PROPOSED RULEMAKING.—In conducting rulemaking to revise, modify or establish size standards pursuant to this section, the Administrator shall consider, and address, and make publicly available as part of the notice of proposed rulemaking and notice of final rule each of the following:

- (A) a detailed description of the industry for which the new size standard is proposed;
- (B) an analysis of the competitive environment for that industry;
- (C) the approach the Administrator used to develop the proposed standard including the source of all data used to develop the proposed rule making; and
- (D) the anticipated effect of the proposed rulemaking on the industry, including the number of concerns not currently considered small that would be considered small under the proposed rule making and the number of concerns currently considered small that would be deemed other than small under the proposed rulemaking.

(7) COMMON SIZE STANDARDS.—In carrying out this subsection, the Administrator may establish or approve a single size standard for a grouping of 4-digit North American Industry Classification System codes only if the Administrator makes publicly available, not later than the date on which such size standard is established or approved, a justification demonstrating that such size standard is appropriate for each individual industry classification included in the grouping.

(8) NUMBER OF SIZE STANDARDS.—The Administrator shall not limit the number of size standards established pursuant to paragraph (2), and shall assign the appropriate size standard to each North American Industry Classification System Code.

(9)²⁸ PETITIONS FOR RECONSIDERATION OF SIZE STANDARDS.—

(A) IN GENERAL.—A person may file a petition for reconsideration with the Office of Hearings and Appeals (established under section 5(i)) of a size standard revised, modified, or established by the Administrator pursuant to this

§ 3(a)(9)(C) to
§ 3(c)(2)(A)(i) tion.

(B) TIME LIMIT.—A person filing a petition for reconsideration described in subparagraph (A) shall file such petition not later than 30 days after the publication in the Federal Register of the notice of final rule to revise, modify, or establish size standards described in paragraph (6).

²⁷ New paragraphs 3(a)(6) – (8) added by § 1661(2)(E) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2083).

²⁸ New paragraph 3(a)(9) added by § 869(b) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 938).

(C) **PROCESS FOR AGENCY REVIEW.**—The Office of Hearings and Appeals shall use the same process it uses to decide challenges to the size of a small business concern to decide a petition for review pursuant to this paragraph.

(D) **JUDICIAL REVIEW.**—The publication of a final rule in the Federal Register described in subparagraph (B) shall be considered final agency action for purposes of seeking judicial review. Filing a petition for reconsideration under subparagraph (A) shall not be a condition precedent to judicial review of any such size standard.

(E)²⁹ **RULES OR GUIDANCE.**—The Office of Hearings and Appeals shall begin accepting petitions for reconsideration described in subparagraph (A) after the date on which the Administration issues a rule or other guidance implementing this paragraph. Notwithstanding the provisions of subparagraph (B), petitions for reconsideration of size standards revised, modified, or established in a Federal Register final rule published between November 25, 2015, and the effective date of such rule or other guidance shall be considered timely if filed within 30 days of such effective date.

(b) for purposes of this Act, any reference to an agency or department of the United States, and the term “Federal agency”, shall have the meaning given the term “agency” by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the Government Accountability Office.³⁰

“Federal agency”.
“Agency.”
[5 USC 551(1)]

(c)³¹ (1) For purposes of this Act, a qualified employee trust shall be eligible for any loan guarantee under section 7(a) with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

Small Business Employee Ownership Act of 1980.

(2) For purposes of this Act, the term “qualified employee trust” means, with respect to a small business concern, a trust—

“Qualified employee trust.”

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of the Internal Revenue Code of 1954)—

(i) which is maintained by such concern, and

²⁹ New subparagraph 3(a)(9)(E) added by § 1833(b) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2661).

³⁰ Subsection 3(b) added by § 224(b) of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1757). “Government Accountability Office” substituted for “General Accounting Office” throughout by § 8(b) of P.L. 108-271, approved July 7, 2004 (118 Stat. 814).

³¹ New subsection 3(c) added by Title V, § 504, of P.L. 96-302, approved July 2, 1980 (94 Stat. 833). Title V may be cited as “Small Business Employee Ownership Act of 1980.” Effective date is Oct. 1, 1980, according to § 507 of P.L. 96-302. See page 979 of this Handbook.

(ii)³² which provides that each participant is entitled to direct the plan trustee as to the manner of how to vote the qualified employee securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1986), which are allocated to the account of such participant with respect to a corporate matter which (by law or charter) must be decided by a vote conducted in accordance with section 409(e) of the Internal Revenue Code of 1986; and

(B) in the case of any loan guarantee under section 7(a), the trustee of which enters into an agreement with the Administrator which is binding on the trust and on such small business concern and which provides that—

(i) the loan guaranteed under section 7(a) shall be used solely for the purchase of qualifying employer securities of such concern,

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and

(iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant's account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a qualified employee trust with respect to a small business concern if —

(A) the trust is maintained by an employee organization which represents at least 51 percent of the employees of such concern, and

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of the Internal Revenue Code of 1954),

³² Clause 3(c)(2)(A)(ii) rewritten by § 862(h) of P.L. 115-232, approved August 13, 2018 (Stat.). Text of former clause (ii) is reprinted below:

(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e)(8) of such Code) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted

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(ii) which provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

(iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and

(iv) which meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Administrator may prescribe, and

(C) in the case of a loan guarantee under section 7(a), such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

(d)³³ For purposes of section 7 of this Act, the term “qualified Indian tribe” means an Indian tribe as defined in section 4(a) of the Indian Self-Determination and Education Assistance Act, which owns and controls 100 per centum of a small business concern. “Qualified Indian tribe.”

(e) For purposes of section 7 of this Act, the term “public or private organization for the handicapped” means one— “Public or private organization for the handicapped.”

(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(2) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

(f)³⁴ For purposes of section 7 of this Act, the term “handicapped individual” means an individual— “Handicapped individual.”

³³New subsections 3(d) - 3(i) added by § 1903 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357). For another definition of “credit elsewhere” [§ 3(h)] see § 18(b)(2) of this Act. For definition of “Indian Tribe” under § 8(a), see § 8(a)(13).

³⁴Subsection 3(f) rewritten by § 401(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 243). Text of former subsection 3(f) is reprinted below:

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(1) who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable; or

(2) who is a service-disabled veteran.

(g) For purposes of section 7 of this Act, the term “energy measures” includes—

“Energy
measures.”

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain or other biomass source of energy;

(5) equipment the primary purpose of which is industrial cogeneration of energy, district heating, or production of energy from industrial waste;

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

(h)³⁵ The term “credit elsewhere” means—

“Credit
elsewhere.”

For purposes of section 7 of this Act, the term “handicapped individual” means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

³⁵ Subsection 3(h) completely rewritten by § 4(a) of P.L. 115-189, approved June 21, 2018 (Stat.). Text of former subsection 3(h) is reprinted below:

For purposes of this Act, the term “credit elsewhere” means the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.

(1) for the purposes of this Act (except as used in section 7(b)), the availability of credit on reasonable terms and conditions to the individual loan applicant from non-Federal, non-State, or non-local government sources, considering factors associated with conventional lending practices, including—

- (A) the business industry in which the loan applicant operates;
- (B) whether the loan applicant is an enterprise that has been in operation for a period of not more than 2 years;
- (C) the adequacy of the collateral available to secure the requested loan;
- (D) the loan term necessary to reasonably assure the ability of the loan applicant to repay the debt from the actual or projected cash flow of the business; and
- (E) any other factor relating to the particular credit application, as documented in detail by the lender, that cannot be overcome except through obtaining a Federal loan guarantee under prudent lending standards; and

(2) for the purposes of section 7(b), the availability of credit on reasonable terms and conditions from non-Federal sources taking into consideration the prevailing rates and terms in the community in or near where the applicant business concern transacts business, or the applicant homeowner resides, for similar purposes and periods of time.

(i) For purposes of section 7 of this Act, the term “homeowners” includes owners and lessees of residential property and also includes personal property.

“Home-owners.”

(j)³⁶ For the purposes³⁷ of this Act, the term “small agricultural cooperative” means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141(j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association³⁸ as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

“Small agricultural cooperatives”
[12 USC 1141j]

³⁶Subsection (j) added by § 310 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Section 312 of P.L. 98-270 provides that this amendment shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under § 7(b)(2)(A), (B), or (C) of the Small Business Act or with respect to which a certification has been made after such date under § 7(b)(2)(D) of such Act.

³⁷ Phrase “of section 7(b)(2)” deleted by § 151(b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-648).

³⁸Subsection (j) amended by § 111(A)(6) of P.L. 98-473, approved Oct. 12, 1984 (98 Stat. 1837 at 1966), to eliminate the prior requirement that each member of the board of directors of the governing body individually qualify as a small business concern. The same amendment also substituted the term “business concern” for the prior “entity.”

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(k)³⁹ (1) For the purposes of this Act, the term “disaster” means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 308(b) of the Interjurisdictional Fisheries Act of 1986)⁴⁰, ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations. “Disaster.”

(2)⁴¹ For purposes of section 7(b)(2), the term “disaster” includes— Drought.

(A) drought;

(B) below average water levels in the Great Lakes, or on any body of water in the United States that supports commerce by small business concerns; and

(C)⁴² ice storms and blizzards.

(l)⁴³ For purposes of this Act—

(1) The term “computer crime” means—

(A) any crime committed against a small business concern by means of the use of a computer; and “Computer crime.”

(B) any crime involving the illegal use of, or tampering with, a computer owned or utilized by a small business concern.

(m)⁴⁴ DEFINITIONS RELATING TO CONTRACTING.—In this Act:

³⁹Subsection (k) added by subsection 119(b)(1) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2999). Subsection 119(b)(2) of P.L. 100-590 renumbered the second subsection 3(j) as 3(l).

⁴⁰Reference to commercial fisheries was added by § 104(b)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-730). Section 104(b)(2) provided that the amendment shall be effective with respect to any disaster occurring on or after March 1, 1994.

⁴¹ Subsection 3(k) renumbered as paragraph 3(k)(1) and new paragraph 3(k)(2) added by § 845(a)(1) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3390).

⁴² Subparagraph 3(k)(2)(C) added by § 12071 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1411). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2173).

⁴³Subsection (l) (formerly (j)) added by § 6 of P.L. 98-362, approved July 16, 1984 (98 Stat. 431). Subsection 119(b)(2) of P.L. 100-590 renumbered the second subsection 3(j) as 3(l).

⁴⁴Subsection 3(m) added by § 806(e)(1) of P.L. 101-510, approved Nov. 5, 1989 (104 Stat. 1593). The phrase “small purchase threshold” changed to “simplified acquisition threshold” by § 4404(a) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3349). Subsection 3(m) completely rewritten by § 1702(b) of P.L. 115-91, approved Dec. 12, 2017 (Stat.). Text of former subsection 3(m) is reprinted below:

(1) **PRIME CONTRACT.**—The term “prime contract” has the meaning given such term in section 8701(4) of title 41, United States Code. “Prime contract.”

(2) **PRIME CONTRACTOR.**—The term “prime contractor” has the meaning given such term in section 8701(5) of title 41, United States Code. “Prime contractor.”

(3) **SIMPLIFIED ACQUISITION THRESHOLD.**—The term “simplified acquisition threshold” has the meaning given such term in section 134 of title 41, United States Code. “Simplified acquisition threshold.”

(4) **MICRO-PURCHASE THRESHOLD.**—The term “micro-purchase threshold” has the meaning given such term in section 1902 of title 41, United States Code. “Micro-purchase threshold.”

(5) **TOTAL PURCHASES AND CONTRACTS FOR PROPERTY AND SERVICES.**—The term “total purchases and contracts for property and services” shall mean total number and total dollar amount of contracts and orders for property and services. “Total purchases and contracts for property and services.”

(n)⁴⁵ For the purposes of this Act, a small business concern is a small business concern owned and controlled by women if—

(1) at least 51 percent of small business concern is owned by one or more women or, in the case of any publicly owned business at least 51 percent of the stock of which is owned by one or more women; and

(2) the management and daily business operations of the business are controlled by one or more women.

(o)⁴⁶ **DEFINITIONS OF BUNDLING OF CONTRACT REQUIREMENTS AND RELATED TERMS.**—In this Act:

(1) **BUNDLED CONTRACT.**—The term “bundled contract” means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements. “Bundled contract.”

(2) **BUNDLING OF CONTRACT REQUIREMENTS.**—The term “bundling of contract requirements” means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to— “Bundling of contract requirements.”

(m) For purposes of this Act, the term “simplified acquisition threshold” has the meaning given such term in section 4(11) of the Office of Federal Procurement Policy Act (41 USC 403(11)).

⁴⁵Subsection 3(n) added by § 7106(d) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3376).

⁴⁶ Subsection 3(o) added by § 412 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2617).

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(A) the diversity, size, or specialized nature of the elements of the performance specified;

(B) the aggregate dollar value of the anticipated award;

(C) the geographical dispersion of the contract performance sites;
or

(D) any combination of the factors described in subparagraphs (A), (B), and (C).

(3) **SEPARATE SMALL CONTRACT.**—The term “separate smaller contract,” with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

“Separate smaller contract.”

(p)⁴⁷ **DEFINITIONS RELATING TO HUBZONES.**—In this Act:

(1) **HISTORICALLY UNDERUTILIZED BUSINESS ZONE.**—The term “historically underutilized business zone” means any area located within 1 or more—

“Historically underutilized business zone.”

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

(C) lands within the external boundaries of an Indian reservation;

(D)⁴⁸ redesignated areas; or

(E)⁴⁹ base closure areas; or

(F)⁵⁰ qualified disaster areas.

(2) **HUBZONE.**—The term “HUBZone” means a historically underutilized business zone.

“HUBZone.”

⁴⁷ Subsection 3(p) added by § 602(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2627).

⁴⁸ Subparagraph 3(p)(1)(D) added by § 613(1)(C) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁴⁹ Subparagraph 3(p)(1)(E) added by § 152(a)(1)(C) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-649). Section 152(a)(2) provides that: “A base closure area that has undergone final closure shall be treated as a HUBZone for purposes of the Small Business Act for a period of 5 years.”

⁵⁰ Subparagraph 3(p)(1)(F) added by § 866(a)(1)(C) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 929).

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(3)⁵¹ HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone small business concern” means—

“HUBZone small business concern.”

(A)⁵² a small business concern that is at least 51 percent owned and controlled by United States citizens;

(B) a small business concern that is—

(i) an Alaska Native Corporation owned and controlled by Natives (as determined pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1))); or

(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 29(e)(1) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(1)), if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 29(e)(2) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(2)));

[43 USC 1626(e)].

(C) a small business concern—

(i) that is wholly owned by 1 or more Indian tribal governments, or by a corporation that is wholly owned by 1 or more Indian tribal governments; or

(ii) that is owned in part by 1 or more Indian tribal governments, or by a corporation that is wholly owned by 1 or more Indian tribal governments, if all other owners are either United States citizens or small business concerns;

(D)⁵³ a small business concern—

(i) that is wholly owned by one or more Native Hawaiian Organizations (as defined in section 8(a)(15)), or by a corporation that is wholly owned by one or more Native Hawaiian Organizations; or

⁵¹ Paragraph 3(p)(3) rewritten by § 602 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Text of former paragraph 3(p)(3) is reprinted below:

(3) HUBZONE SMALL BUSINESS CONCERN.—The term “HUBZone small business concern” means a small business concern—

(A) that is owned and controlled by 1 or more persons, each of whom is a United States citizen; and

(B) the principal office of which is located in a HUBZone; or

⁵² Subparagraph 3(p)(3)(A) rewritten by § 151(a)(1)(A) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-648). Former subparagraph 3(p)(3)(A) read as follows: “a small business concern that is owned and controlled by 1 or more persons, each of whom is a United States citizen.”

⁵³ New subparagraph 3(p)(3)(D) added by § 866(a)(2)(B) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 929).

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(ii) that is owned in part by one or more Native Hawaiian Organizations, or by a corporation that is wholly owned by one or more Native Hawaiian Organizations, if all other owners are either United States citizens or small business concerns;

(E)⁵⁴ a small business concern that is—

(i) wholly owned by a community development corporation that has received financial assistance under Part 1 of Subchapter A of the Community Economic Development Act of 1981 (42 U.S.C. 9805 et seq.); or

[42 USC
9805 et seq].

(ii) owned in part by 1 or more community development corporations, if all other owners are either United States citizens or small business concerns; or

(F)⁵⁵ a small business concern that is—

(i) a small agricultural cooperative organized or incorporated in the United States;

(ii) wholly owned by 1 or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.

(4) QUALIFIED AREAS—

(A) QUALIFIED CENSUS TRACT.—

“Qualified
census tract.”

(i) IN GENERAL.—The term “qualified census tract” has the meaning given that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986.

(ii)⁵⁶ EXCEPTION.—For any metropolitan statistical area in the Commonwealth of Puerto Rico, the term “qualified census tract” has the meaning given

⁵⁴ New subparagraph 3(p)(3)(D) added by § 614(1)(C) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Redesignated as 3(p)(3)(E) as § 866(a)(2)(A) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 929).

⁵⁵ New subparagraph 3(p)(3)(E) added by § 151(a)(1)(D) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-648). Redesignated as 3(p)(3)(F) as § 866(a)(2)(A) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 929).

⁵⁶ Subparagraph 3(p)(4)(A) rewritten to add clause (ii) by § 412(a)(1) of P.L. 114-187, approved June 30, 2016 (130 Stat. 595). Section 412(a)(2) provides:

(2) REGULATIONS.—The Administrator of the Small Business Administration shall issue regulations to implement the amendment made by paragraph (1) not later than 90 days after the date of the enactment of this Act.

that term in section 42(d)(5)(B)(ii) of the Internal Revenue Code of 1986 as applied without regard to subclause (II) of such section, except that this clause shall only apply—

(I) 10 years after the date that the Administrator implements this clause, or

(II) the date on which the Financial Oversight and Management Board for the Commonwealth of Puerto Rico created by the Puerto Rico Oversight, Management, and Economic Stability Act ceases to exist,

whichever event occurs first.

(B)⁵⁷ QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified nonmetropolitan county” means any county—

“Qualified nonmetropolitan county.”

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986; and

(ii) in which—

(I) the median household income is less than 80 percent of the nonmetropolitan State median household income, based on the most recent data available from the Bureau of the Census of the Department of Commerce;

(II)⁵⁸ the unemployment rate is not less than 140 percent of the average unemployment rate for the United States or for the State in which such county is located, whichever is less, based on the most recent data available from the Secretary of Labor; or

⁵⁷ Subparagraph 3(p)(4)(B) was rewritten by § 611(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Text of former subparagraph (4)(B) is reprinted below:

(B) QUALIFIED NONMETROPOLITAN COUNTY.—The term “qualified nonmetropolitan county” means any county—

(i) that, based on the most recent data available from the Bureau of the Census of the Department of Commerce—
(I) is not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986); and

(II) in which the median household income is less than 80 percent of the nonmetropolitan State median household income; or

(ii) that, based on the most recent data available from the Secretary of Labor, has an unemployment rate that is not less than 140 percent of the statewide average unemployment rate for the State in which the county is located.

⁵⁸ Item 3(p)(4)(B)(ii)(II) rewritten by § 152(b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-649). Text of former 3(p)(4)(B)(ii)(II) is reprinted below:

the unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.

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(III)⁵⁹ there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of 1986, within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(C)⁶⁰ REDESIGNATED AREA.—The term “redesignated area” means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a “redesignated area” only⁶¹ until the later of—

“Redesignated area.”

(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(ii) 3 years after the date on which the census tract or nonmetropolitan county ceased to be so qualified.

(D)⁶² BASE CLOSURE AREA.—

⁵⁹ New item 3(p)(4)(B)(ii)(III) added by § 10203 of P.L. 109-59, approved Aug. 10, 2005 (119 Stat. 1933).

⁶⁰ New subparagraph 3(p)(4)(C) added by § 613(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁶¹ Phrase “only for the 3-year period following” deleted and phrase “only until the later of” and the two clauses following added by § 152(c)(1) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-649). Section 152(c)(2) provides the following:

(2) STUDY AND REPORT.—

(A) STUDY.—The Independent Office of Advocacy of the Small Business Administration shall conduct a study of the HUBZone program to measure the effectiveness of the definitions under section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) relating to HUBZone qualified areas for the purposes of economic impact on small business development and jobs creation.

(B) REPORT.—Not later than May 1, 2008, the Independent Office of Advocacy shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—

(i) the results of the study conducted under paragraph (1); and

(ii) any proposed changes to the existing definitions under section 3(p)(4) of the Small Business Act (15 U.S.C. 632(p)(4)) relating to HUBZone qualified areas.

⁶² Subparagraph 3(p)(4)(D) added by § 152(a)(3) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-649).

Subparagraph (D) completely rewritten by § 866(a)(3)(A) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 929). Text of former subparagraph (D) is reprinted below:

(D) BASE CLOSURE AREA.—The term “base closure area” means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(i) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101-510; 10 U.S.C. 2687 note);

(ii) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note);

(iii) section 2687 of title 10, United States Code; or

(iv) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military

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(i) IN GENERAL.—Subject to clause (ii), the term “base closure area” means—

“Base closure area.”

(I) lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(aa) the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of division B of Public Law 101-510; 10 U.S.C. 2687 note);

(bb) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note);

(cc) section 2687 of title 10, United States Code; or

(dd) any other provision of law authorizing or directing the Secretary of Defense or the Secretary of a military department to dispose of real property at the military installation for purposes relating to base closures of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use;

(II) the census tract or nonmetropolitan county in which the lands described in subclause (I) are wholly contained;

(III) a census tract or nonmetropolitan county the boundaries of which intersect the area described in subclause (I); and

(IV) a census tract or nonmetropolitan county the boundaries of which are contiguous to the area described in subclause (II) or subclause (III).

(ii) LIMITATION.—A base closure area shall be treated as a HUBZone—

(I) with respect to a census tract or nonmetropolitan county described in clause (i), for a period of not less than 8 years, beginning on the date the military installation undergoes final closure and ending on the date the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph (A) or (B) in accordance with the results of the decennial census conducted after the area was initially designated as a base closure area; and

department to dispose of real property at the military installation for purposes relating to base closures of [sic] redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.

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(II) if such area was treated as a HUBZone at any time after 2010, until such time as the Administrator makes a final determination as to whether or not to implement the applicable designation described in subparagraph (A) or (B), after the 2020 decennial census.

(iii) DEFINITIONS.—In this subparagraph:

(I) CENSUS TRACT.—The term “census tract” means a census tract delineated by the United States Bureau of the Census in the most recent decennial census that is not located in a nonmetropolitan county and does not otherwise qualify as a qualified census tract.

“Census tract.”

(II) NONMETROPOLITAN COUNTY.—The term “nonmetropolitan county” means a county that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986) at the time of the most recent census taken for purposes of selecting qualified census tracts and does not otherwise qualify as a qualified nonmetropolitan county.

“Nonmetropolitan county.”

(E)⁶³ QUALIFIED DISASTER AREA.—

(i) IN GENERAL.—Subject to clause (ii), the term “qualified disaster area” means any census tract or nonmetropolitan county located in an area for which the President has declared a major disaster under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or located in an area in which a catastrophic incident has occurred if such census tract or nonmetropolitan county ceased to be qualified under subparagraph (A) or (B), as applicable, during the period beginning 5 years before the date on which the President declared the major disaster or the catastrophic incident occurred and ending 2 years after such date, except that such census tract or nonmetropolitan county may be a “qualified disaster area” only—

“Qualified disaster area.”

(I) in the case of a major disaster declared by the President, during the 5-year period beginning on the date on which the President declared the major disaster for the area in which the census tract or nonmetropolitan county, as applicable, is located; and

(II) in the case of a catastrophic incident, during the 10-year period beginning on the date on which the catastrophic incident occurred in the area in which the census tract or nonmetropolitan county, as applicable, is located.

⁶³ New subparagraph 3(p)(4)(E) added by § 866(a)(3)(B) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 931). Section 866(b) of P.L. 114-92 provides:

(b) APPLICABILITY.—The amendments made by subsection (a)(3)(B) shall apply to a major disaster declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or a catastrophic incident that occurs on or after the date of enactment of such subsection.

(ii) **LIMITATION.**—A qualified disaster area described in clause (i) shall be treated as a HUBZone for a period of not less than 8 years, beginning on the date the Administrator makes a final determination as to whether or not to implement the designations described in subparagraphs (A) and (B) in accordance with the results of the decennial census conducted after the area was initially designated as a qualified disaster area.

(5)⁶⁴ **QUALIFIED HUBZONE SMALL BUSINESS CONCERN—**

(A) **IN GENERAL.**—A HUBZone small business concern is “qualified,” if—

“Qualified HUBZone small business concern.”

(i) the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by the Administration by regulation) that—

(I)⁶⁵ it is a HUBZone small business concern—

⁶⁴ Section 412(b) of P.L. 114-187, approved June 30, 2016 (130 Stat. 595), provides:

- (1) **GUIDANCE.**—Not later than 270 days after the date of the enactment of this Act, the Administrator of the Small Business Administration shall develop and implement criteria and guidance on using a risk-based approach to requesting and verifying information from entities applying to be designated or recertified as qualified HUBZone small business concerns (as defined in section 3(p)(5) of the Small Business Act (15 U.S.C. 632(p)(5)).
- (2) **ASSESSMENT.**—Not later than 1 year after the date on which the criteria and guidance described in paragraph (1) is implemented, the Comptroller General of the United States shall begin an assessment of such criteria and guidance. Not later than 6 months after beginning such an assessment, the Comptroller General shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and The Committee on Small Business of the House of Representatives that includes—
- (A) an assessment of the criteria and guidance issued by the Administrator of the Small Business Administration in accordance with paragraph (1);
 - (B) an assessment of the implementation of the criteria and guidance issued by the Administrator of the Small Business Administration in accordance with paragraph (1);
 - (C) An assessment as to whether these measures have successfully ensured that only qualified HUBZone small business concerns are participating in the HUBZone program under section 31 of the Small Business Act (15 U.S.C. 657a);
 - (D) an assessment as to whether the reforms made by the criteria and guidance implemented under paragraph (1) have resulted in job creation in the Commonwealth of Puerto Rico; and
 - (E) recommendations on how to improve controls in the HUBZone program.

⁶⁵ Subclauses 3(p)(5)(A)(i)(I) and (II) rewritten by § 603(a) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Text of former subclauses is reprinted below:

- (I) it is a HUBZone small business concern;
- (II) not less than 35 percent of the employees of the small business concern reside in a HUBZone, and the small business concern will attempt to maintain this employment percentage during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and

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(aa) pursuant to subparagraph (A), (B), (C), (D) or (E),⁶⁶ or (F)⁶⁷ of paragraph (3), and that its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone; or

(bb)⁶⁸ pursuant to subparagraph (A), (B), (C), (D), (E), or (F) of paragraph (3), that its principal office is located within a base closure and that not fewer than 35 percent of its employees reside in such base closure area or in another HUBZone; or

(cc)⁶⁹ pursuant to paragraph (3)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on the basis of a preference provided under section 31(b) reside within any Indian reservation governed by 1 or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

(II) the small business concern will attempt to maintain the applicable employment percentage under subclause (I) during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 31(b); and

(III)⁷⁰ with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern

⁶⁶ References to subparagraphs (C) and (E) added by § 151(a)(2) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-648).

⁶⁷ Reference to subparagraph (F) added by § 866(a)(4)(A)(i) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 931).

⁶⁸ New item 3(p)(5)(A)(i)(I)(bb) added by § 866 (a)(4)(C) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 931).

⁶⁹ Item 3(p)(5)(A)(i)(I)(bb) redesignated as (cc) by § 866(a)(4)(B) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 931).

⁷⁰ Subclause 3(p)(5)(A)(i)(III) rewritten by § 1696(b)(1)(A) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090). Text of former subclause (III) reprinted below:

(III) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 31, the small business concern will ensure that—

(aa) in the case of a contract for services (except construction), not less than 50 percent of the cost of contract performance incurred for personnel will be expended for its employees or for employees of other HUBZone small business concerns;

(bb) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), not less than 50 percent of the cost of manufacturing the supplies (not including the cost of materials) will be incurred in connection with the performance of the contract in a HUBZone by 1 or more HUBZone small business concerns;

(cc) in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, none of the commodity being procured will be obtained by the prime contractor through a subcontractor for the purchase of the commodity in substantially the final form in which it is to be supplied to the Government; and

Item (cc) added by § 612(b)(1)(B) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

under section 31, the small business concern will ensure that the requirements of section 46 are satisfied; and

(ii) no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 31(c)(1)—

(I) successfully challenged by an interested party;

or

(II) otherwise determined by the Administrator to be materially false.

(B)⁷¹ LIST OF QUALIFIED SMALL BUSINESS CONCERNS.—The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

(i) once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern,⁷² include the name, address, and type of business with respect to each such small business concern;

(ii) be updated by the Administrator not less than annually;

and

(iii) be provided upon request to any Federal agency or other entity.

(6)⁷³ NATIVE AMERICAN SMALL BUSINESS CONCERNS.—

⁷¹ Subparagraphs 3(p)(5)(B) and (C) deleted and subparagraph (D) redesignated as (B) by § 1696(b)(1)(B) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090). Text of former subparagraphs (B) and (C) reprinted below:

(B) CHANGE IN PERCENTAGES.—The Administrator may utilize a percentage other than the percentage specified in under [sic] item (aa) or (bb) of subparagraph (A)(i)(III), if the Administrator determines that such action is necessary to reflect conventional industry practices among small business concerns that are below the numerical size standard for businesses in that industry category.

(C) CONSTRUCTION AND OTHER CONTRACTS.—The Administrator shall promulgate final regulations imposing requirements that are similar to those specified in items (aa) and (bb) of subparagraph (A)(i)(III) on contracts for general and specialty construction, and on contracts for any other industry category that would not otherwise be subject to those requirements. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B).

⁷² Language preceding the footnote signal was added by § 603(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁷³ New paragraph 3(p)(6) added by § 604 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

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(A) ALASKA NATIVE CORPORATION.—The term “Alaska Native Corporation” has the same meaning as the term “Native Corporation” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602). “Alaska Native Corporation.” [43 USC 1602].

(B) ALASKA NATIVE VILLAGE.—The term “Alaska Native Village” has the same meaning as the term “Native village” in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602). “Alaska Native Village.” [43 USC 1602].

(C) INDIAN RESERVATION.—The term “Indian reservation”—
(i) has the same meaning as the term “Indian country” in section 1151 of title 18, United States Code, except that such term does not include—

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on the date of enactment of this paragraph, unless that tribe is recognized after that date of enactment by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); and [25 CFR Part 83].

(II) lands taken into trust or acquired by an Indian tribe after the date of enactment of this paragraph if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on that date of enactment; and

(ii) in the State of Oklahoma, means lands that—
(I) are within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(II) are recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on the date of enactment of this paragraph). [25 CFR Part 151].

(7)⁷⁴ AGRICULTURAL COMMODITY.—The term “agricultural commodity” has the same meaning as in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602). “Agricultural commodity.” [7 USC 5602]

(q)⁷⁵ DEFINITIONS RELATING TO VETERANS.—In this Act, the following definitions apply:

⁷⁴ Paragraph 3(p)(7) added by § 612 (b)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁷⁵ Subsection 3(q) added by § 103(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 234). Section 103(b) of P.L. 106-50 provides:

APPLICABILITY TO THIS ACT.—In this Act, the definitions contained in section 3(q) of the Small Business Act, as added by this section, apply

(1) **SERVICE-DISABLED VETERAN.**—The term “service-disabled veteran” means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38, United States Code).

“Service-disabled veteran.”

(2)⁷⁶ **SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.**—The term “small business concern owned and controlled by service-disabled veterans means any of the following:

“Small business concern owned and controlled by service-disabled veterans.”

(A) A small business concern—

(i) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more service-disabled veterans; and

(ii) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(B) A small business concern—

(i) not less than 51 percent of which is owned by one or more service-disabled veterans with a disability that is rated by the Secretary of Veterans Affairs as a permanent and total disability who are unable to manage the daily business operations of such concern; or

(ii) in the case of a publicly owned business, not less than 51 percent of the stock (not including any stock owned by an ESOP) of which is owned by one or more such veterans.

(C) (i) During the time period described in clause (ii), a small business concern that was a small business concern described in subparagraph (A) or (B) immediately prior to the death of a service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, if—

⁷⁶ Paragraph 3(q)(2) rewritten by § 1832(a)(1) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2658). Text of former paragraph 3(q)(2) is reprinted below:

SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term “small business concern owned and controlled by service-disabled veterans” means a small business concern—
(A) not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
(B) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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(I) the surviving spouse of the deceased veteran acquires such veteran’s ownership interest in such concern;

(II) such veteran had a service-connected disability (as defined in section 101(16) of title 38, United States Code) rated as 100 percent disabling under the laws administered by the Secretary of Veterans Affairs or such veteran died as a result of a service-connected disability; and

(III) immediately prior to the death of such veteran, and during the period described in clause (ii), the small business concern is included in the database described in section 8127(f) of title 38, United States Code. [38 USC 8127(f)]

(ii) The time period described in this clause is the time period beginning on the date of the veteran’s death and ending on the earlier of—

(I) the date on which the surviving spouse remarries;

(II) the date on which the surviving spouse relinquishes an ownership interest in the small business concern; or

(III) the date that is 10 years after the date of the death of the veteran.

(3) **SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.**—The term “small business concern owned and controlled by veterans” means a small business concern—

“Small business concern owned and controlled by veterans.”

(A) not less than 51 percent of which is owned by one or more veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and

(B) the management and daily business operations of which are controlled by one or more veterans.

(4) **VETERAN.**—The term “veteran” has the meaning given the term in section 101(2) of title 38, United States Code.

“Veteran.”

(5)⁷⁷ **RELIEF FROM TIME LIMITATIONS.**—

Relief from time limitations.

(A) **IN GENERAL.**—Any time limitation on any qualification, certification, or period of participation imposed under this Act on any program that is available to small business concerns shall be extended for a small business concern that—

⁷⁷ New paragraph 3(q)(5) added by § 205 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 629).

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(i) is owned and controlled by—

(I) a veteran who was called or ordered to active duty under a provision of law specified in section 101(a)(13)(B) of title 10, United States Code, on or after September 11, 2001; or [10 USC 101(a)(13)(B)]

(II) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of active duty pursuant to a call or order to active duty under a provision of law referred to in subclause (I) on or after September 11, 2001; and

(ii) was subject to the time limitation during such period of active duty.

(B) DURATION.—Upon submission of proper documentation to the Administrator, the extension of a time limitation under subparagraph (A) shall be equal to the period of time that such veteran who owned or controlled such a concern was on active duty as described in that subparagraph.

(C) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM ACT OF 1990—The provisions of subparagraphs (A) and (B) shall not apply to any programs subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.). [2 USC 661]

(6)⁷⁸ ESOP—The term “ESOP” has the meaning given the term “employee stock ownership plan” in section 4975(e)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)(7)). “ESOP.”

(7) SURVIVING SPOUSE.—The term “surviving spouse” has the meaning given such term in section 101(3) of title 38, United States Code. “Surviving spouse.”

(r)⁷⁹ DEFINITIONS RELATING TO SMALL BUSINESS LENDING COMPANIES.—As used in section 23 of this Act:

(1) SMALL BUSINESS LENDING COMPANY.—The term “small business lending company” means a business concern that is authorized by the Administrator to make loans pursuant to section 7(a) and whose lending activities are not subject to regulation by any Federal or State regulatory agency. “Small business lending company.” § 3(w)(1)

(2) NON-FEDERALLY REGULATED LENDER⁸⁰.—The term “non-Federally regulated lender” means a business concern if— “Non-Federally regulated lender.”

⁷⁸ New paragraphs 3(q)(6) and (7) added by § 1832(a)(2) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2658).

⁷⁹ Subsection 3(r) added by § 162 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-657).

⁸⁰ “SBA” deleted from “Non-Federally regulated SBA lender” by § 3(e) of P.L. 115-189, approved June 21, 2018 (Stat.).

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(A) such concern is authorized by the Administrator to make loans under section 7;

(B) such concern is subject to regulation by a State; and

(C) the lending activities of such concern are not regulated by any Federal banking authority.

(s)⁸¹ MAJOR DISASTER.—In this Act, the term “major disaster” has the meaning given that term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122). “Major disaster.” [42 USC 5122].

(t)⁸² SMALL BUSINESS DEVELOPMENT CENTER.—In this Act, the term “small business development center” means a small business development center described in section 21. “Small business development center”.

(u) REGION OF THE ADMINISTRATION.—In this Act, the term “region of the Administration” means the geographic area served by a regional office of the Administration established under section 4(a). “Region of the Administration.”

(v)⁸³ MULTIPLE AWARD CONTRACT.—In this Act, the term “multiple award contract” means— “Multiple award contract.”

(1) a multiple award task order contract or delivery order contract that is entered into under the authority of chapter 41 of title 41, United States Code; and [41 USC ch. 41].

(2) any other indefinite delivery, indefinite quantity contract that is entered into by the head of a Federal agency with 2 or more sources pursuant to the same solicitation.

(w)⁸⁴ PRESUMPTION.— Presumption of loss.

(1) IN GENERAL.—In every contract, subcontract, cooperative agreement, cooperative research and development agreement, or grant which is set aside, reserved, or otherwise classified as intended for award to small business concerns, there shall be a presumption of loss to the United States based on the total amount expended on the contract, subcontract, cooperative agreement, cooperative research and development

⁸¹ Subsection 3(s) added by § 12063(c)(1) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1409). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2171).

⁸² New subsections 3(t) and (u) added by § 1202(b)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2521).

⁸³ New subsection 3(v) added by § 1311 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2536).

⁸⁴ New subsection 3(w) added by § 1341 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2543).

agreement, or grant whenever it is established that a business concern other than a small business concern willfully sought and received the award by misrepresentation.

(2) DEEMED CERTIFICATIONS.—The following actions shall be deemed affirmative, willful, and intentional certifications of small business size and status:

(A) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement reserved, set aside, or otherwise classified as intended for award to small business concerns.

(B) Submission of a bid or proposal for a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement which in any way encourages a Federal agency to classify the bid or proposal, if awarded, as an award to a small business concern.

(C) Registration on any Federal electronic database for the purpose of being considered for award of a Federal grant, contract, subcontract, cooperative agreement, or cooperative research and development agreement as a small business concern.

(3) CERTIFICATION BY SIGNATURE OF RESPONSIBLE OFFICIAL.—

(A) IN GENERAL.—Each solicitation, bid, or application for a Federal contract, subcontract, or grant shall contain a certification concerning the small business size and status of a business concern seeking the Federal contract, subcontract, or grant.

(B) CONTENT OF CERTIFICATIONS.—A certification that a business concern qualifies as a small business concern of the exact size and status claimed by the business concern for purposes of bidding on a Federal contract or subcontract, or applying for a Federal grant, shall contain the signature of an authorized official on the same page on which the certification is contained.

(4) REGULATIONS.—The Administrator shall promulgate regulations to provide adequate protections to individuals and business concerns from liability under this subsection in cases of unintentional errors, technical malfunctions, and other similar situations.

Regulations.

(x)⁸⁵ ANNUAL CERTIFICATION.—

Annual certification.

(1) IN GENERAL.—Each business certified as a small business concern under this Act shall annually certify its small business size and, if appropriate, its small business status, by means of a confirming entry on the Online Representations and Certifications Application database of the Administration, or any successor thereto.

⁸⁵ New subsection 3(x) added by § 1342 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2544).

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(2) REGULATIONS.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Inspector General and the chief Counsel for Advocacy of the Administration, shall promulgate regulations to ensure that— Regulations.

(A) no business concern continues to be certified as a small business concern on the Online Representations and Certifications Application database of the Administration, or any successor thereto, without fulfilling the requirements for annual certification under this subsection; and

(B) the requirements of this subsection are implemented in a manner presenting the least possible regulatory burden on small business concerns.

(y)⁸⁶ POLICY ON PROSECUTIONS OF SMALL BUSINESS SIZE AND STATUS FRAUD.—Not later than 1 year after the date of enactment of this subsection, the Administrator, in consultation with the Attorney General, shall issue a Government-wide policy on prosecution of small business size and status fraud, which shall direct Federal agencies to appropriately publicize the policy.

(z)⁸⁷ AQUACULTURE BUSINESS DISASTER ASSISTANCE.—Subject to section 18(a) and notwithstanding section 18(b)(1), the Administrator may provide disaster assistance under section 7(b)(2) to aquaculture enterprises that are small businesses.

(aa)⁸⁸ VENTURE CAPITAL OPERATING COMPANY.—In this Act, the term “venture capital operating company” means an entity described in clause (i), (v), or (vi) of section 121.103(b)(5) of title 13, Code of Federal Regulations (or any successor thereto).

“Venture capital operating company.”

(bb) HEDGE FUND.—In this Act, the term “hedge fund” has the meaning given that term in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

“Hedge fund.”

(cc) PRIVATE EQUITY FIRM.—In this Act, the term “private equity firm” has the meaning given the term “private equity fund” in section 13(h)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1851(h)(2)).

“Private equity firm.”

(dd)⁸⁹ DEFINITIONS PERTAINING TO SUBCONTRACTING.—In this Act:

(1) SUBCONTRACT.—The term “subcontract” means a legally binding agreement between a contractor that is already under contract to another party to perform

“Subcontract.”

⁸⁶ New subsection 3(y) added by § 1343(b) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2545).

⁸⁷ New subsection 3(z) added by § 1501 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2550).

⁸⁸ New subsections 3(aa) – (cc) added by § 5107(b) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1829).

⁸⁹ New subsection 3(dd) added by § 1614(b) of P.L. 113-66, approved Dec. 26, 2013 (127 Stat. 949).

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work, and a third party, hereinafter referred to as the subcontractor, for the subcontractor to perform a part, or all, of the work that the contractor has undertaken.

(2) **FIRST TIER SUBCONTRACTOR.**—The term “first tier subcontractor” means a subcontractor who has a subcontract directly with the prime contractor. “First tier subcontractor.”

(3) **AT ANY TIER.**—The term “at any tier” means any subcontractor other than a subcontractor who is a first tier subcontractor. “At any tier.”

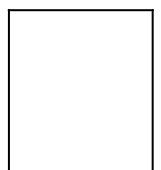
(ee)⁹⁰ **PUERTO RICO BUSINESS.**—In this Act, the term “Puerto Rico business” means a small business concern that has its principal office located in the Commonwealth of Puerto Rico. “Puerto Rico business.”

§ 4. (a) In order to carry out the policies of this Act there is hereby created an agency under the name “Small Business Administration” (herein referred to as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia. The Administration may establish such branch and regional offices in other places in the United States as may be determined by the Administrator of the Administration. As used in this Act, the term “United States” includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.⁹¹ Small Business Administration. 15 USC 633. “United § 4(b)(1)

(b)⁹² (1) The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents.⁹³ The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate.⁹⁴ The Administrator is authorized to appoint Associate Administrators⁹⁵ (including the Associate Administrator specified in section 201 of the Small Business Investment Act of 1958) to Deputy Administrator.

⁹⁰ New subsection 3(ee) added by § 861(a) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁹¹Section 1721 of P.L. 90-448, the Housing and Urban Development Act of 1968, approved Aug. 1, 1968 (82 Stat. 610), amended § 4(a) to include the Trust Territory of the Pacific Islands. (Compare § 103(4) of the Small Business Investment Act of 1958, as amended, which defines the term “State” to include the several States, and Territories and possessions of the United States, the Commonwealth of Puerto Rico, and the District of Columbia). Part of the Trust Territory became the Commonwealth of the Northern Mariana Islands by virtue of P.L. 94-241, approved March 24, 1976 (90 Stat. 263).



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assist in the execution of the functions vested in the Administration. One such Associate Administrator shall be the Associate Administrator for International Trade, who shall be the head of the Office of International Trade established under section 22⁹⁶. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development who shall be an employee in the competitive service or in the Senior Executive Service and a career
§ 4(b)(2) to
§ 4(b)(2)(B) ⁹⁷ and shall be responsible to the Administrator for the formulation and execution of
 es and programs under sections 7(j) and 8(a) of this Act which provide assistance to
minority small business concerns.⁹⁸ The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.⁹⁹ One such Associate Administrator shall be the Chief Hearing Officer, who shall administer the Office of Hearings and Appeals established under section 5(i).¹⁰⁰

⁹²Subsection 4(b) redesignated as subsection 4(b)(1) by § 401 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833).

⁹³Sentence added by § 8 of P.L. 93-237, approved Jan. 2, 1974 (87 Stat. 1023). Section 701 of P.L. 106-50, approved August 17, 1999 (113 Stat. 249) provides:

The Administrator of the Small Business Administration shall strengthen and reissue the Administrator’s order regarding the third sentence of section 4(b)(1) of the Small Business Act, relating to nondiscrimination and special considerations for veterans, and take all necessary steps to ensure that its provisions are fully and vigorously implemented.

⁹⁴Sentence rewritten by § 1(a) of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2140), to provide for presidential appointment of the Deputy Administrator. Section 1(b) of P.L. 101-515 provides that “[t]he provisions of subsection (a) of this section shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the effective date of this Act.” The same language appears in § 221 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2823).

⁹⁵ “Four” inserted in lieu of “three” by § 7(1) of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742). “Five” inserted by § 201(a)(1) of P.L. 106-50, approved August 17, 1999 (113 Stat. 235). Section 201(a)(2) of P.L. 106-50 added the fifth Associate Administrator for Veterans Business Development. “Five” deleted by § 1203(b)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2521).

⁹⁶ The Associate Administrator for International Trade was added by § 1203(b)(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2521)

⁹⁷The requirement that the Associate Administrator for Minority Small Business and Capital Ownership Development be in the competitive service or a career appointee added by § 401(a) of P.L. 100-656, approved Nov. 15, 1988 (102 Stat. 3873). Section 401(b) of P.L. 100-656 provides that:

The position of Associate Administrator for Minority Small Business and Capital Ownership Development referred to in paragraph (1) of section 4(b) of the Act shall be a career reserved position.

⁹⁸The clause “and shall be responsible . . .” rewritten by § 103 of P.L. 96-481, approved Oct. 21, 1980 (94 Stat. 2321).

⁹⁹Section 8 of P.L. 89-779, approved Nov. 6, 1966 (80 Stat. 1364), replaced the three Deputy Administrators previously authorized by § 4(b) and the Deputy Administrator authorized by § 201 of the Small Business Investment Act of 1958 with a single Deputy Administrator authorized to be Acting Administrator and three Associate Administrators. The Associate Administrator for Minority Small Business authorized by § 7(2) of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742). Section 206 of P.L. 95-507, approved Oct. 24, 1978 (92 Stat. 1757), changed “Associate Administrator for Minority Small Business” to “Associate Administrator for Minority Small Business and Capital Ownership Development.”

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(2)¹⁰¹ The Administrator also shall be responsible for—

(A) establishing and maintaining an external small business economic data base for the purpose of providing the Congress and the Administration information on the economic condition and the expansion or contraction of the small business sector. To that end, the Administrator shall publish on a regular basis national small business economic indices and, to the extent feasible, regional small business economic indices, which shall include, but need not be limited to, data on—

Economic data base.

Economic indices, publication

- (i) employment, layoffs, and new hires;
- (ii) number of business establishments and the types of such establishments such as sole proprietorships, corporations, and partnerships;
- (iii) number of business formations and failures;
- (iv) sales and new orders;
- (v) back orders;
- (vi) investment in plant and equipment;
- (vii) changes in inventory and rate of inventory turnover;
- (viii) sources and amounts of capital investment, including debt, equity, and internally generated funds;
- (ix) debt to equity ratios;
- (x) exports;
- (xi) number and dollar amount of mergers and acquisitions by size of acquiring and acquired firm; and
- (xii) concentration ratios; and

(B) publishing annually a report giving a comparative analysis and interpretation of the historical trends of the small business sector as reflected by the data acquired pursuant to subparagraph (A) of this subsection.

§ 4(b)(3) to § 4(b)(3)(B)(ix) publication.

(3)¹⁰² RISK MANAGEMENT DATABASE.—

Risk management database.

¹⁰⁰ The Chief Hearing Officer was added by § 869(a)(2) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 93)

¹⁰¹New subsection 4(b)(2) added by § 401 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833).

¹⁰²New subsection 4(b)(3) added by § 102 of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-725). Former subsection 4(b)(3), establishing the Small Business Computer Security and Education Advisory Council, added by § 3 of P.L. 98-362, approved July 16, 1984 (98 Stat. 431), effective Oct. 1, 1984, per § 7(a) thereof. Section 4(b)(3) was extended

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(A) ESTABLISHMENT.—The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 7 of this Act and title V of the Small Business Investment Act of 1958, a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

(B) INFORMATION TO BE MAINTAINED.—In addition to such other information as the Administration considers appropriate, the database established under subparagraph (A) shall, with respect to each loan program described in subparagraph (A), include information relating to—

- (i) the identity of the institution making the guaranteed loan or issuing the debenture;
- (ii) the identity of the borrower;
- (iii) the total dollar amount of the loan or debenture;
- (iv) the total dollar amount of government exposure in each loan;
- (v) the district of the Administration in which the borrower has its principal office;
- (vi) the principal line of business of the borrower, as identified by Standard Industrial Classification Code (or any successor to that system);
- (vii) the delinquency rate for each program (including number of instances and days overdue);
- (viii) the number and amount of repurchases, losses, and recoveries in each program;
- (ix) the number of deferrals or forbearances in each program (including days and number of instances);
- (x) comparisons on the basis of loan program, lender, district and region of the Administration¹⁰³, for all the data elements maintained; and

§ 4(b)(3)(B)(x) to
§ 4(b)(4)(B)

to March 31, 1991, per § 212 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2821). The same extension was enacted by § 11 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2145). The sunset date was extended to Oct. 1, 1994 by § 225 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1001); no further extensions were enacted.

¹⁰³ Phrase “Administration district and region” replaced with current language by § 1202(b)(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2521).

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(xi) underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-to-value and other actual and projected ratios, line of business, credit history, and type of loan.

(C) DEADLINE FOR OPERATIONAL CAPABILITY.—The database established under subparagraph (A) shall—

- (i) be operational not later than June 30, 1997; and
- (ii) capture data beginning on the first day of the second quarter of fiscal year 1997 beginning after such date and thereafter.

(4)¹⁰⁴ (A) The Administrator shall establish a small business computer security and education program to—

Computer security and education program.

- (i) provide small business concerns information regarding
 - (I) utilization and management of computer technology;
 - (II) computer crimes committed against small business concerns; and
 - (III) security for computers owned or utilized by small business concerns;
- (ii) provide for periodic forums for small business concerns to improve their knowledge of the matters described in clause (i); and
- (iii) provide training opportunities to educate small business users on computer security techniques.

(B) The Administrator, after consultation with the Director of the Institute of Computer Sciences and Technology within the Department of Commerce, shall develop information and materials to carry out the activities described in subparagraph (A) of this paragraph.

¹⁰⁴ Paragraph 4(b)(4) was added by § 4 of P.L. 98-362, approved July 16, 1984 (98 Stat. 433).

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(c) (1)¹⁰⁵ There are hereby established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 5(e), 7(b)(1), 7(b)(2), 7(b)(3),¹⁰⁶ 7(b)(4), and 7(d)(2)¹⁰⁷ of this Act; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 5(g),¹⁰⁸ 7(a),¹⁰⁹ and 8(a) of this Act, and titles III, IV¹¹⁰ and V of the Small Business Investment Act of 1958.

Revolving funds.

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 5(e), 7(b)(1), 7(b)(2), 7(b)(3), 7(b)(4), 7(b)(5), 7(b)(6), 7(b)(7), 7(b)(8), 7(d)(2)¹¹¹, and 7(g)¹¹² of this Act shall be paid into a disaster loan fund; and (B) pursuant to sections 5(g), 7(a),¹¹³ 7(h), 7(i), 7(l),¹¹⁴ 7(m),¹¹⁵ and 8(a) of this Act, and titles III, IV and V

Repayment.

¹⁰⁵Section 4(c) was substantially amended, effective July 1, 1966, by § 2 of P.L. 89-409, approved May 2, 1966 (80 Stat. 132), primarily to establish two revolving funds instead of the former single commingled fund. (A third revolving fund for carrying out the Lease Guarantee Program was established in § 403 of the SBIA of 1958, as amended. A fourth revolving fund for the Surety Bond Guarantee Program was later established in § 412 of the SBIA of 1958, as amended. A fifth separate revolving fund was also established by § 405 of the SBIA of 1958, as amended.) The amendment also added the requirement for quarterly reports to certain congressional committees on the status of the revolving funds and also the provision on preparing Agency budgets according to the Government Corporation Control Act. Section 4(c) was further amended by P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553). Section 7(b)(3) functions were transferred from the business loan and investment fund to the disaster loan fund by § 401 of P.L. 95-89. Section 5(e) (loan moratorium) functions were placed in the disaster loan fund by § 304 of P.L. 95-89.

¹⁰⁶“7(b)(4)” inserted after “7(b)(3)” by § 306 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Sections 7(b)(3) and (4) repealed by § 18006(a) of P.L. 99-272, approved April 7, 1986 (100 Stat. 366).

¹⁰⁷Section 4(c)(1)(A) was amended by § 1913(b) of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357), to be effective on Oct. 1, 1981, per § 1918 of P.L. 97-35. This amendment deleted references to §§ 7(b)(4)-7(b)(8) and § 7(g). Reference changed from “7(c)(2)” to “7(d)(2)” by § 12068(b)(1)(A) of P.L. 110-234, approved May 22, 2008 (122 Stat. 1411). The same change was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2172).

¹⁰⁸Sections 4(c)(1)(B) and 4(c)(2)(B) were amended by § 5 of P.L. 98-352, Secondary Market Improvement Act of 1984, approved July 10, 1984 (98 Stat. 329), by adding § 5(g) to the financing functions for which the business loan and investment fund is available.

¹⁰⁹Section 4(c)(1)(B) was amended by § 1908 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357), to be effective on Oct. 1, 1981, per § 1918 of P.L. 97-35. This amendment deleted references to §§ 7(e), 7(h), 7(i) and 7(l). Section 7(l) had previously been added by § 4 of P.L. 95-315, approved July 4, 1978 (92 Stat. 379).

¹¹⁰Title IV added to §§ 4(c)(1)(B) and (2)(B) by § 111(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2995).

¹¹¹ Reference changed from “7(c)(2)” to “7(d)(2)” by § 12068(b)(1)(B)(i) of P.L. 110-234, approved May 22, 2008 (122 Stat. 1412). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2173).

¹¹²“7(g)” added by § 201 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553).

¹¹³ Reference to “7(e)” deleted by § 12068(b)(1)(B)(ii) of P.L. 110-234, approved May 22, 2008 (122 Stat. 1412). The same language was enacted again in P.L. 110-246, June 18, 2008 (Stat.).

¹¹⁴“7(l)” added by § 4 of P.L. 95-315, approved July 4, 1978 (92 Stat. 379).

¹¹⁵“7(m)” added by § 609(k)(2) of P.L. 102-140, approved Oct. 28, 1991 (105 Stat. 831).

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of the Small Business Investment Act of 1958, shall be paid into the business loan and investment fund.

(3) Unexpended balances of appropriations made to the fund pursuant to this subsection, as in effect immediately prior to the effective date of this paragraph, shall be allocated, together with related assets and liabilities, to the funds established by paragraph (1) in such amounts as the Administrator shall determine.¹¹⁶ Unexpended balances.

(4)¹¹⁷ The Administration shall submit to the Committees on Appropriations, Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, as soon as possible after the beginning of each calendar quarter, a full and complete report on the status of each of the funds established by paragraph (1). Business-type budgets for each of the funds established by paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives and considered, and enacted in the manner prescribed by law (Sections 102, 103 and 104 of the Government Corporation Control Act (31 USC 847-849)) for wholly owned Government corporations. Reports to Congress. Budget preparation.

(5) (A)¹¹⁸ The Administration is authorized to make and issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under the revolving funds created by section 4(c)(1) of this Act and for authorized expenditures out of the funds. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Administration with the approval of the Secretary of the Treasury. Such notes shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketable obligations of the United States having maturities comparable to the notes issued by the Administration under this paragraph. The Secretary of the Treasury is authorized and directed to purchase any notes of the Administration issued hereunder, and, for that purpose, the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which such securities may be issued under such Act, as amended, are extended to include the Borrowing authority for revolving funds.

¹¹⁶Sentence authorizing appropriations to funds established by paragraph (1) deleted by § 101(b) of P.L. 95-89 (effective Oct. 1, 1977), approved Aug. 4, 1977 (91 Stat. 553). See § 20 of this Act, Authorization for appropriations.

¹¹⁷Former § 4(c)(4), dealing with program limits, repealed by § 101(c) of P.L. 95-89 (effective Oct. 1, 1977), approved Aug. 4, 1977 (91 Stat. 553). Section 102 of P.L. 95-89 amended § 20 of this Act and established program levels therein. Section 202 of P.L. 95-89 redesignated this paragraph [formerly (5)] as paragraph (4). It substituted “Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives” for “the Committees on Banking and Currency of the Senate and House of Representatives” in the first sentence; deletes a reference to former paragraph (4) authorization and substitutes “Committees on Appropriations, the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives” for “Congress” in the last sentence. The Senate deleted the word “select” by S. Res. 101, 97th Cong., 1st Sess., March 25, 1981.

¹¹⁸This paragraph, formerly paragraph (6), was redesignated paragraph (5) by § 202 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553). Section 4(c)(5) rewritten by § 121 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833), to provide for borrowing authority for SBA revolving funds.

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purchase of notes issued by the Administration. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(B) (i) Moneys in the funds established in subsection (c)(1) not needed for current operations may be paid into miscellaneous receipts of the Treasury.

(ii)¹¹⁹ Following the close of each fiscal year, the Administration shall pay into the miscellaneous receipts of the United States Treasury the actual interest that the Administration collects during that fiscal year on all financings made under this Act.

(C) Except on those loan disbursements on which interest is paid under subsection (B)(ii), the Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest received by the Administration on financing functions performed under this Act and titles III and V of the Small Business Investment Act of 1958 providing the capital used to perform such functions originated from appropriated funds. Such payments shall be treated by the Department of the Treasury as interest income, not as retirement of indebtedness.

(D) There are authorized to be appropriated, in any fiscal year, such sums as may be necessary for losses and interest subsidies incurred by the funds established by subsection (c)(1), but not previously reimbursed. Appropriation authorization.

(d) There is hereby created the Loan Policy Board of the Small Business Administration, which shall consist of the following members, all ex officio. The Administrator, as Chairman, the Secretary of the Treasury, and the Secretary of Commerce. Either of the said Secretaries may designate an officer of his Department, who has been appointed by the President by and with the advice and consent of the Senate, to act in his Loan Policy Board.
is a member of the Loan Policy Board with respect to any matter or matters. The Loan Board shall establish general policies (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Administration and with reference to the coordination of the functions of the Administration with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administration.¹²⁰

§ 4(e) to
§ 4(g)

¹¹⁹Section 4(c)(5)(B)(ii) rewritten by § 601 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4201). Former text of § 4(c)(5)(B)(ii) is set out below: Obscene material - § 4(e) prohibited.

The Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest on the average of loan disbursements outstanding throughout the year providing such disbursements are made from amounts appropriated for the disaster loan fund after October 1, 1980 or are made from repayments of principal of loans made from funds appropriated to the disaster loan fund, or from amounts appropriated to the business loan and investment fund on or after October 1, 1981 or are made from repayments of principal of loans made from funds appropriated to the business loan and investment fund and received on or after October 1, 1981. This interest shall be calculated solely on the amount of loan disbursements net of losses at the rate provided under subsection (c)(5)(A)

(e)¹²¹ PROHIBITION ON THE PROVISION OF ASSISTANCE.—

Notwithstanding any other provision of law, the Administration is prohibited from providing any financial or other assistance to any business concern or other person engaged in the production or distribution of any product or service that has been determined to be obscene by a court of competent jurisdiction.

(f)¹²² CERTIFICATION OF COMPLIANCE WITH CHILD SUPPORT OBLIGATIONS.—

Child support compliance.

(1) IN GENERAL.—For financial assistance approved after the promulgation of final regulations to implement this section, each recipient of financial assistance under this Act, including a recipient of a direct loan or a loan guarantee, shall certify that the recipient is not more than 60 days delinquent under the terms of any—

(A) administrative order;

(B) court order; or

(C) repayment agreement entered into between the recipient and the custodial parent or State agency providing child support enforcement services,

that requires the recipient to pay child support, as such term is defined in section 462(b) of the Social Security Act.

(2) ENFORCEMENT.—Not later than 6 months after the date of enactment of this subsection, the Administration shall promulgate such regulations as may be necessary to enforce compliance with the requirements of this subsection.

(g)¹²³ BUSINESS OPPORTUNITY SPECIALISTS.—

¹²⁰The SBA Loan Policy Board was abolished by Reorganization Plan No. 4 of 1965 (effective July 27, 1965; 30 F.R. 9353) and its functions transferred to the SBA Administrator.

¹²¹Subsection 4(e) added by § 611 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4204).

¹²²Subsection 4(f) added by § 612 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4205).

¹²³ Subsection 4(g) completely rewritten by § 865(a)(1) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 927). Subsection 4(g) rewritten again by § 1704 of P.L. 115-91, approved Dec. 12, 2017 (Stat.). Former subsections 4(g) and (h) added by § 132(a) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-644). For the text of subsection 4(g) as it relates to gifts, see earlier editions of this Handbook.

Text of former § 4(g) is reprinted below:

(g) CERTIFICATION REQUIREMENTS FOR BUSINESS OPPORTUNITY SPECIALISTS.—

(1) IN GENERAL.—Consistent with the requirements of paragraph (2), a Business Opportunity Specialist described under section 7(j)(10)(D) shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist who was serving on or before January 3, 2013, may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on such date without such a certification.

(1) DUTIES.—The exclusive duties of a Business Opportunity Specialist employed by the Administrator and reporting to the senior official appointed by the Administrator with responsibilities under sections 8, 15, 31, and 36 (or the designee of such official) shall be to implement sections 7, 8, and 45 and to complete other duties related to contracting programs under this Act. Such duties shall include—

(A) with respect to small business concerns eligible to receive contracts and subcontracts pursuant to section 8(a)—

(i) providing guidance, counseling, and referrals for assistance with technical, management, financial, or other matters that will improve the competitive viability of such concerns;

(ii) identifying causes of success or failure of such concerns;

(iii) providing comprehensive assessments of such concerns, including identifying the strengths and weaknesses of such concerns;

(iv) monitoring and documenting compliance with the requirements of sections 7 and 8 and any regulations implementing those sections;

(v) explaining the requirements of sections 7, 8, 15, 31, 36, and 45; and

(vi) advising on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of such a contract or subcontract.

(B) reviewing and monitoring compliance with mentor-protégé agreements under section 45;

(C) representing the interests of the Administrator and small business concerns in the award, modification, and administration of contracts and subcontracts awarded pursuant to section 8(a); and

(D) reporting fraud or abuse under section 7, 8, 15, 31, 36, or 45 or any regulations implementing such sections.

(2) DELAY OF CERTIFICATION REQUIREMENT.—

(A) TIMING.—The certification described in paragraph (1) is not required for any person serving as a Business Opportunity Specialist until the date that is one calendar year after the date such person is appointed as a Business Opportunity Specialist.

(B) APPLICATION.—The requirements of subparagraph (A) shall—

(i) be included in any initial job posting for the position of a Business Opportunity Specialist; and

(ii) apply to any person appointed as a Business Opportunity Specialist after January 3, 2013.

§ 4(g)(1)(D) to
§ 4(h)(1)

(2) CERTIFICATION REQUIREMENTS.—

(A) IN GENERAL.—Consistent with the requirements of subparagraph (B), a Business Opportunity Specialist described under section 7(j)(10)(D) shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification.

(B) DELAY OF CERTIFICATION REQUIREMENT.—The certification described in subparagraph (A) is not required—

(i) for any person serving as a Business Opportunity Specialist on the date of the enactment of this subsection, until the date that is one calendar year after the date such person was appointed as a Business Opportunity Specialist; or

(ii) for any person serving as a Business Opportunity Specialist on or before January 3, 2013, until January 3, 2020.

(3) JOB POSTING REQUIREMENTS.—The duties and certification requirements described in this subsection shall be included in any initial job posting for the position of a Business Opportunity Specialist.

(h)¹²⁴ COMMERCIAL MARKET REPRESENTATIVES.—

§ 4(h)(1)(A) to § 4(h)(2)(b)(ii)

(1) DUTIES.—The principal duties of a commercial market representative employed by the Administrator and reporting to the senior official appointed by the Administrator with responsibilities under sections 8, 15, 31, and 36 (or the designee of such official) shall be to advance the policies established in section 8(d)(1) relating to subcontracting, including—

¹²⁴ Subsection 4(h) completely rewritten by § 865(b) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 928). Section 4(h) rewritten again by §1705 of P.L. 115-91, approved Dec. 12, 2017 (Stat.). For the text of subsection 4(h) as relates to cosponsorship of events, see earlier editions of this Handbook. Text of former subsection 4(h) is reprinted below:

(h) CERTIFICATION REQUIREMENTS FOR COMMERCIAL MARKET REPRESENTATIVES.—

(1) IN GENERAL.—Consistent with the requirements of paragraph (2), a commercial market representative referred to in section 15(q)(3) shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a commercial market representative who was serving on or before the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016 may continue to serve as a commercial market representative for a period of 5 years beginning on such date without such a certification.

(2) DELAY OF CERTIFICATION REQUIREMENT.—

(A) TIMING.—The certification described in paragraph (1) is not required for any person serving as a commercial market representative until the date that is one calendar year after the date such person is appointed as a commercial market representative.

(B) APPLICATION.—The requirements of subparagraph (A) shall—

(i) be included in any initial job posting for the position of a commercial market representative; and

(ii) apply to any person appointed as a commercial market representative after the date of the enactment of the National Defense Authorization Act for Fiscal Year 2016.

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(A) helping prime contractors to find small business concerns that are capable of performing subcontracts;

(B) for contractors awarded contracts containing the clause described in section 8(d)(3), providing—

(i) counseling on the responsibility of the contractor to maximize subcontracting opportunities for small business concerns;

(ii) instruction on methods and tools to identify potential subcontractors that are small business concerns; and

(iii) assistance to increase awards to subcontractors that are small business concerns through visits, training, and reviews of past performance;

(C) providing counseling on how a small business concern may promote the capacity of the small business concern to contractors awarded contracts containing the clause described in section 8(d)(3); and

(D) conducting periodic reviews of contractors awarded contracts containing the clause described in section 8(d)(3) to assess compliance with subcontracting plans required under section 8(d)(6).

(2) CERTIFICATION REQUIREMENTS.—

(A) IN GENERAL.—Consistent with the requirements of subparagraph (B), a commercial market representative referred to in section 15(q)(3) shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification.

(B) DELAY OF CERTIFICATION REQUIREMENT.—The certification described in subparagraph (A) is not required—

(i) for any person serving as a commercial market representative on the date of the enactment of this subsection, until the date that is one calendar year after the date on which the person was appointed as a commercial market representative; or

(ii) for any person serving as a commercial market representative on or before November 25, 2015, until November 25, 2020.

(3) JOB POSTING REQUIREMENTS.—The duties and certification requirements described in this subsection shall be included in any initial job posting for the position of a commercial market representative.

§ 4(h)(3) to
§ 5(b)(4)

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§ 5. (a) 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 Act; to define their authority and duties;¹²⁵ 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 non-reimbursable basis of the use of information, services, facilities (including any field service thereof), officers, and employees thereof, in carrying out the provisions of this Act.

Administration powers.
15 USC 634.

(b) In the performance of, and with respect to, the functions, powers, and duties vested in him by this Act the Administrator may—

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;

Sue and be sued.

(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 Act, 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;

Dispose of property.

(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 Act;

Utilize property.

(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 3709 of the Revised Statutes, as amended (41 U.S.C., sec. 5), 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 Act 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

Collect claims.

¹²⁵The phrase “to provide bonds for them in such amounts as the Administrator shall determine” was deleted by § 224(a) of P.L. 92-310, approved June 6, 1972 (86 Stat. 206).

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mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this Act 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 7(a) and 7(b); Acquire property.

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

(7)¹²⁶ 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 Act: Provided, That with respect to deferred participation loans, including loans guaranteed under paragraph (15) or (35) of section 7(a),¹²⁷ 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; Service of attorneys.

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with the Travel Expense Act of 1949, 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 7(b) 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: Provided¹²⁸ That the Administrator may extend the six-month limitation Employ and reimburse temporary employees.

¹²⁶Section 5(b)(7) amended by § 114 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833), to authorize SBA to delegate certain loan processing functions to qualified preferred lenders. For reference to such lenders, see § 7(a)(2). The proviso in § 5(b)(7) was rewritten by § 208(i) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-747). The text of the former proviso is reprinted below:

That nothing herein shall be construed as authorizing the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but with respect to deferred participation loans he may authorize participating lending institutions, in his discretion pursuant to regulations promulgated by him, to take such actions on his behalf, including, but not limited to the determination of eligibility and creditworthiness, and loan monitoring, collection and liquidation;

¹²⁷ Reference to loans made under paragraph (15) or (35) added by § 862(b)(2) of P.L. 115-232, approved August 13, 2018 (Stat.).

¹²⁸Proviso added by § 2 of P.L. 103-282, approved July 22, 1994 (108 Stat 1422).

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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 7(b); Accept free services.

(10)¹²⁹ upon purchase by the Administration of any deferred participation entered into under section 7 of this Act, 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; Interest on participation purchased.

(11)¹³⁰ make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this Act 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 Act, or of any rule or regulation under this Act, or of any order issued under this Act. 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 [sic] 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 [sic] 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; and Investigations.

§ 5(b)(12)(A) to § 5(c)

(12)¹³¹ 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— 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;

¹²⁹ Paragraph 5(b)(10) added by § 3(1) of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742).

¹³⁰ Paragraph 5(b)(11) added by § 3(1) of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742).

¹³¹ Paragraphs 5(b)(12) and (13) added by § 602 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4202).

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(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 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 Act and the Small Business Investment Act of 1958;

(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)¹³² require any lender authorized to make loans under section 7 of this Act 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.

Lender examination and review fees.

(c) To such extent as he finds necessary to carry out the provisions of this Act, 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 3709 of the Revised Statutes, as amended (41 U.S.C. § 5). 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, United States Code, including traveltime, and, while such individual is 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, United States Code.¹³³

Employ consultants. Experts and consultants, compensation and expenses.

§ 5(d) to § 5(e)(4)(A)

(d) Section 3648 of the Revised Statutes (31 U.S.C. 529) 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.¹³⁴

Safety deposit boxes.

¹³² New paragraph 5(b)(14) added by § 131 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-644).

¹³³Last sentence of subsection 5(c) was amended by § 103 of P.L. 95-510, approved Oct. 24, 1978 (92 Stat. 1780), effective Oct. 1, 1979.

¹³⁴Subsection 5(d) added by § 4 of P.L. 87-305, approved Sept. 26, 1961 (75 Stat. 666).

(e) (1)¹³⁵ 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 Act, 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.

Moratorium.

(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 7(a)(4)(C)¹³⁶ and 7(i)(l)¹³⁷ of this Act, 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.

Loan maturity extension.

§ 5(e)(4)(A)(i) to § 5(f)(1)

(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—

Repayment agreement.

(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

¹³⁵Subsection 5(e), dealing with loan moratoriums, added by § 303 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553). Former § 5(e), which was added by § 10 of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742), to establish a Chief Counsel for Advocacy, was repealed by § 208 of P.L. 94-305, approved June 4, 1976 (90 Stat. 663). Title II of P.L. 94-305, which provides for the establishment and functions of the Office of Advocacy, is set out at page 958 of this Handbook.

¹³⁶Section 7(a)(4)(C) is now § 7(a)(5).

¹³⁷Although the lending authority of § 7(i) was transferred to § 7(a)(11) by § 1902(a) of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357), existing § 7(i) inadvertently was not repealed by P.L. 97-35, supra.

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(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 or 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.

“Required payments.”

§ 5(f)(1)(A) to § 5(f)(1)(C)

(f) (1)¹³⁸ The guaranteed portion of any loan made pursuant this Act 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:

Secondary market.

(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

¹³⁸Subsections 5(f) through (h) added by § 2 of P.L. 98-352, Small Business Secondary Market Improvements Act of 1984, approved July 10, 1984 (98 Stat. 329). Section 3 of P.L. 98-352 provides:

- (a) Within ninety days after the date of enactment of this Act, 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, and shall contract with an agent for an initial period of [sic] not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.
- (b) Within nine months after the date of enactment of this Act, 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 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, until final rules and regulations become effective.

Section 226 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1001) provides:

VIABILITY OF SECONDARY MARKETS.—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.

(C)¹³⁹ each loan, except each loan made under section 7(a)(14), 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

¹³⁹Section 509 of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 159) provides:

SEC. 509. ESTABLISHMENT OF SBA SECONDARY MARKET LENDING AUTHORITY.

(a) PURPOSE.—The purpose of this section is to provide the Small Business Administration with the authority to establish a Secondary Market Lending Authority within the SBA to make loans to the systemically important SBA secondary market broker-dealers who operate the SBA secondary market.

(b) DEFINITIONS.—For purposes of this section:

(1) The term “Administrator” means the Administrator of the SBA.

(2) The term “SBA” means the Small Business Administration.

(3) The terms “Secondary Market Lending Authority” and “Authority” mean the office established under subsection (c).

(4) The term “SBA secondary market” means the market for the purchase and sale of loans originated, underwritten, and closed under the Small Business Act.

(5) The term “Systemically Important Secondary Market Broker-Dealers” means those entities designated under subsection (c)(1) as vital to the continued operation of the SBA secondary market by reason of their purchase and sale of the government guaranteed portion of loans, or pools of loans, originated, underwritten, and closed under the Small Business Act.

(c) RESPONSIBILITIES, AUTHORITIES, ORGANIZATION, AND LIMITATIONS.—

(1) DESIGNATION OF SYSTEMICALLY IMPORTANT SBA SECONDARY MARKET BROKER-DEALERS.

—The Administrator shall establish a process to designate, in consultation with the Board of Governors of the Federal Reserve and the Secretary of the Treasury, Systemically Important Secondary Market Broker-Dealers.

(2) ESTABLISHMENT OF SBA SECONDARY MARKET LENDING AUTHORITY.—

(A) ORGANIZATION.—

(i) The Administrator shall establish within the SBA an office to provide loans to Systemically Important Secondary Market Broker-dealers to be used for the purpose of financing the inventory of the government guaranteed portion of loans, originated, underwritten, and closed under the Small Business Act or pools of such loans.

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

(iii) The Administrator is authorized to hire such personnel as are necessary to operate the Authority.

(iv) The Administrator may contract such Authority operations as he determines necessary to qualified third-party companies or individuals.

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

(B) LOANS.—

(i) The Administrator shall establish by rule a process under which Systemically Important SBA Secondary Market Broker-Dealers designated under paragraph (1) may apply to the Administrator for loans under this section.

(ii) The rule under clause (i) shall provide a process for the Administrator to consider and make decisions regarding whether or not to extend a loan applied for under this section. Such rule shall include provisions to assure each of the following:

(I) That loans made under this section are for the sole purpose of financing the inventory of the government guaranteed portion of loans, originated, underwritten, and closed under the Small Business Act or pools of such loans.

(II) That loans made under this section are fully collateralized to the satisfaction of the Administrator.

(III) That there is no limit to the frequency in which a borrower may borrow under this section unless the

result of secondary market operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 7(a) 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.¹⁴⁰

(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 7(a) of this

Administrator determines that doing so would create an undue risk of loss to the agency or the United States.

(IV) That there is no limit on the size of a loan, subject to the discretion of the Administrator.

(iii) Interest on loans under this section shall not exceed the Federal Funds target rate as established by the Federal Reserve Board of Governors plus 25 basis points.

(iv) The rule under this section shall provide for such loan documents, legal covenants, collateral requirements and other required documentation as necessary to protect the interests of the agency, the United States, and the taxpayer.

(v) The Administrator shall establish custodial accounts to safeguard any collateral pledged to the SBA in connection with a loan under this section.

(vi) The Administrator shall establish a process to disburse and receive funds to and from borrowers under this section.

(C) LIMITATIONS ON USE OF LOAN PROCEEDS BY SYSTEMICALLY IMPORTANT SECONDARY MARKET BROKER-DEALERS.—The Administrator shall ensure that borrowers under this section are using funds provided under this section only for the purpose specified in subparagraph (B)(ii)(I). If the Administrator finds that such funds were used for any other purpose, the Administrator shall—

(i) require immediate repayment of outstanding loans;

(ii) prohibit the borrower, its affiliates, or any future corporate manifestation of the borrower from using the Authority; and

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

(d) REPORT TO CONGRESS.—The Administrator shall submit a report to Congress not later than the third business day of each month containing a statement of each of the following:

(1) The aggregate loan amounts extended during the preceding month under this section.

(2) The aggregate loan amounts repaid under this section during the proceeding [sic] month.

(3) The aggregate loan amount outstanding under this section.

(4) The aggregate value of assets held as collateral under this section;

(5) The amount of any defaults or delinquencies on loans made under this section.

(6) The identity of any borrower found by the Administrator to misuse funds made available under this section.

(7) Any other information the Administrator deems necessary to fully inform Congress of undue risk of financial loss to the United States in connection with loans made under this section.

(e) DURATION.—The authority of this section shall remain in effect for a period of 2 years after the date of enactment of this section.

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

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

(i) EMERGENCY RULEMAKING AUTHORITY.—The Administrator shall promulgate regulations under this section within 30 days after the date of enactment of this section. In promulgating these regulations, the Administrator [sic] the notice requirements of section 553(b) of title 5 of the United States Code shall not apply.

[?] Paragraph 5(f)(1)(C) was rewritten by § 209 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Text of former 5(f)(1)(C) follows: “(C) each loan shall have been fully disbursed to the borrower prior to any sale.”

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Act, 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 7(a)(6)(C)¹⁴¹ or subsection (e) of this section.

(g) (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 Act, or under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 660):¹⁴² 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.

Trust
certificates.

(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.

Full faith
and credit.

¹⁴⁰The last sentence of § 5(f)(3) added by § 103(e) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-727).

¹⁴¹“5(e), 7(a)(6), or 7(a)(8)” deleted and replaced by current language by § 307(d) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4264).

¹⁴²Last clause before proviso changed from “except separate trust certificates shall be issued for loans approved under section 7(a)(13)” by § 609(a) of P.L. 102-140, approved Oct. 28, 1991 (105 Stat. 825). Previous language added by § 113 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2997).

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(4)¹⁴³ (A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) 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 on behalf of the Administration the central registration functions required by subsection (h)(1)(A) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 7(a) of this Act: 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).

Loan
guarantee
fees.

¹⁴³The first sentence of paragraph 5(g)(4) was rewritten by § 4(b)(1) of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297). Text of former sentence is reprinted below:

The Administration may collect the following fees for loan guarantees sold into the secondary market pursuant to the provisions of subsection (f): 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.

For applicability of the changes made by P.L. 104-36, see footnote to § 7(a)(2).

Previous paragraph 5(g)(4) rewritten by § 3(a) of P.L. 103-81, approved August 13, 1993 (107 Stat. 780). Text of former § 5(g)(4) is reprinted below:

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).

Section 3(b) of P.L. 103-81 provided that:

Any new fees imposed by the Administration pursuant to the authority conferred by subsection (a) 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 after August 31, 1993.

Section 7 of P.L. 103-81 provided that the changes made to § 5(g)(4) are repealed on September 30, 1996.

Section 6 of P.L. 103-81 provided:

The Administration shall study, monitor and evaluate the impact of the amendments made by sections 3 and 5 of this Act [§§ 5(g)(4)(A) and 7(a)(2)(B) of the Small Business Act, respectively] 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. Not later than 16 months after the date of enactment, 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.

SMALL BUSINESS ACT

(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)¹⁴⁴ 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 7(a)(23). 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. Compensation of agents.

(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)¹⁴⁵ If the amount of the guaranteed portion of any loan under section 7(a) 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) (1) Upon the adoption of final rules and regulations, the Administration shall—

(A)¹⁴⁶ provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section; Central registration of certificates.

¹⁴⁴ New subparagraph 5(g)(4)(C) added by § 3(1) of P.L. 108-306, approved Sept. 24, 2004 (118 Stat. 1131).

¹⁴⁵ New paragraph 5(g)(6) added by § 1117 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2509).

¹⁴⁶ Subsection 5(h) was rewritten by § 205(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-738). Former paragraphs 5(h)(1) - (4) were renumbered as subparagraphs 5(h)(1)(A) - (D) and new paragraph 5(h)(2) was added. Former paragraph 5(h)(1) (new 5(h)(1)(A)) was rewritten. Text of former § 5(h)(1) is set out below:

provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate

(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 Act and to the purchaser of a trust certificate issued pursuant to subsection (g), information on 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

“Seller.”

(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)¹⁴⁷ 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.

(i)¹⁴⁸ OFFICE OF HEARINGS AND APPEALS.—

Office of Hearings and Appeals.

(1) ESTABLISHMENT.—

(A) OFFICE.—There is established in the Administration an Office of Hearings and Appeals—

- (i) to impartially decide matters relating to program
- (I) for which Congress requires a hearing on the record; or
- (II) that the Administrator designates for hearing by regulation; and

§ 5(i)(1)(A)(i)(II) to
§ 5(i)(3)

¹⁴⁷ New paragraph 5(h)(2) added and former paragraph 5(h)(2) redesignated as 5(h)(3) by § 3(2) of P.L. 108-306, approved Sept. 24, 2004 (118 Stat. 1131).

¹⁴⁸ New subsection 5(i) added by §869(a)(1) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 936).

SMALL BUSINESS ACT

(ii) which shall contain the office of the Administration that handles requests submitted pursuant to sections 552 of title 5, United States Code (commonly referred to as the “Freedom of Information Act”) and maintains records pursuant to section 552a of title 5, United States Code (commonly referred to as the “Privacy Act of 1974”).

(B)¹⁴⁹ JURISDICTION.—

(i) IN GENERAL.—Except as provided in clause (ii), the Office of Hearings and Appeals shall hear appeals of agency actions under or pursuant to this Act, the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.), and title 13 of the Code of Federal Regulations, and shall hear such other matters as the Administrator may determine appropriate.

(ii) EXCEPTION.—The Office of Hearings and Appeals shall not adjudicate disputes that require a hearing on the record, except disputes pertaining to the small business programs described in this Act.

(C) ASSOCIATE ADMINISTRATOR.—The head of the Office of Hearings and Appeals shall be the Chief Hearing Officer appointed under section 4(b)(1), who shall be responsible to the Administrator.

(2) CHIEF HEARING OFFICER DUTIES.—

(A) IN GENERAL.—The Chief Hearing Officer shall—

(i) be a career appointee in the Senior Executive Service and an attorney licensed by a State, commonwealth, territory or possession of the United States, or the District of Columbia; and

(ii) be responsible for the operations and management of the Office of Hearings and Appeals.

(B) ALTERNATIVE DISPUTE RESOLUTION.—The Chief Hearing Officer may assign a matter for mediation or other means of alternative dispute resolution.

§ 5(i)(3)(A) to
§ 6(a)

(3) HEARING OFFICERS.—

(A) IN GENERAL.—The Office of Hearings and Appeals shall appoint Hearing Officers to carry out the duties described in paragraph (1)(A)(i).

¹⁴⁹ Subparagraph 5(i)(1)(B) rewritten by § 1833(a) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2661). Text of former subparagraph 5(i)(1)(B) is reprinted below:

JURISDICTION.—The Office of Hearings and Appeals shall only hear appeals of matters as described in this Act, the Small Business Investment Act of 1958, and title 13 of the Code of Federal Regulations.

(B) CONDITIONS OF EMPLOYMENT.—A Hearing Officer appointed under this paragraph—

(i) shall serve in the excepted service as an employee of the Administration under section 2103 of title 5, United States Code, and under the supervision of the Chief Hearing Officer;

(ii) shall be classified at a position to which section 5376 of title 5, United States Code, applies; and

(iii) shall be compensated at a rate not exceeding the maximum rate payable under such section.

(C) AUTHORITY; POWERS.—Notwithstanding section 556(b) of title 5, United States Code—

(i) a Hearing Officer may hear cases arising under section 554 of such title;

(ii) a Hearing Officer shall have the powers described in section 556(c) of such title; and

(iii) the relevant provisions of subchapter II of chapter 5 of such title (except for section 556(b) of such title) shall apply to such Hearing Officer.

(D) TREATMENT OF CURRENT PERSONNEL.—An individual serving as a Judge in the Office of Hearings and Appeals (as that position and office are designated in section 134.101 of title 13, Code of Federal Regulations) on the effective date of this subsection shall be considered as qualified to be, and redesignated as, a Hearing Officer.

(4) HEARING OFFICER DEFINED.—In this subsection, the term “Hearing Officer” means an individual appointed or redesignated under this subsection who is an attorney licensed by a State, commonwealth, territory or possession of the United States, or the District of Columbia.

“Hearing Officer.”

§ 6. (a) All moneys of the Administration not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administration. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers conferred by his Act. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administration. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administration, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

Depositaries of funds. 15 USC 635.

§ 6(b) to § 7(a)

SMALL BUSINESS ACT

(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established by section 4(c) of this Act. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

§ 7. (a)¹⁵⁰ **LOANS TO SMALL BUSINESS CONCERNS; ALLOWABLE PURPOSES; QUALIFIED BUSINESS; RESTRICTIONS AND LIMITATIONS.**—The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes,¹⁵¹ for

Business
loans.
15 USC 636.

¹⁵⁰Section 7(a) was completely rewritten by Title XIX, § 1902, of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357). Title XIX of P.L. 97-35 may be cited as the “Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981,” per § 1901. New § 7(a) consolidated several former categorical programs into the § 7(a) regular business loan program to unify interest rates and loan terms. The new heading for § 7(a) was added by § 231(1) of P.L.105-135, approved Dec. 2, 1997 (111 Stat. 2606).

Section 506 of P.L. 111-5 , approved Feb. 17, 2009 (123 Stat. 157), provides:

SEC. 506. BUSINESS STABILIZATION PROGRAM.

(a) **IN GENERAL.**—Subject to the availability of appropriations, the Administrator of the Small Business Administration shall carry out a program to provide loans on a deferred basis to viable (as such term is determined pursuant to regulation by the Administrator of the Small Business Administration) small business concerns that have a qualifying small business loan and are experiencing immediate financial hardship.

(b) **ELIGIBLE BORROWER.**—A small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632).

(c) **QUALIFYING SMALL BUSINESS LOAN.**—A loan made to a small business concern that meets the eligibility standards in section 7(a) of the Small Business Act (15 U.S.C. 636(a)) but shall not include loans guarantees (or loan guarantee commitments made) by the Administrator prior to the date of enactment of this Act.

(d) **LOAN SIZE.**—Loans guaranteed under this section may not exceed \$35,000.

(e) **PURPOSE.**—Loans guaranteed under this program shall be used to make periodic payment of principal and interest, either in full or in part, on an existing qualifying small business loan for a period of time not to exceed 6 months.

(f) **LOAN TERMS.**—Loans made under this section shall:

(1) carry a 100 percent guaranty; and

(2) have interest fully subsidized for the period of repayment.

(g) **REPAYMENT.**—Repayment for loans made under this section shall—

(1) be amortized over a period of time not to exceed 5 years; and

(2) not begin until 12 months after the final disbursement of funds is made.

(h) **COLLATERAL.**—The Administrator of the Small Business Administration may accept any available collateral, including subordinated liens, to secure loans made under this section.

(i) **FEES.**—the Administrator of the Small Business Administration is prohibited from charging any processing fees, origination fees, application fees, points, brokerage fees, bonus points, prepayment penalties, and other fees that could be charged to a loan applicant for loans under this section.

(j) **SUNSET.**—The Administrator of the Small Business Administration shall not issue loan guarantees under this section after September 30, 2010.

(k) **EMERGENCY RULEMAKING AUTHORITY.**—The Administrator of the Small Business Administration shall issue regulations under this section within 15 days after the date of enactment of this section. The notice requirements of section 553(b) of title 5, United States Code shall not apply to the promulgation of such regulations.

¹⁵¹The inclusion of Indian-owned small business concerns was made by § 231 of P.L. 95-507, approved Oct. 24, 1978 (92

SMALL BUSINESS ACT

purposes of this Act. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—

Credit
elsewhere.

(i) IN GENERAL.—The Administrator has the authority to direct, and conduct oversight for, the methods by which lenders determine whether a borrower is able to obtain credit elsewhere.¹⁵² No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.¹⁵³ § 7(a)(1)(A)(ii)

Stat. 1757), to create an exception to the longstanding policy that governmental entities may not receive SBA assistance. See 105 O.D. 107, p. 1349. See § 3(d) which defines the term “qualified Indian tribe,” previously defined at this point.

¹⁵² The first sentence in this clause was added by § 4(a)(2) of P.L. 115-189, approved June 21, 2018 (Stat.).

¹⁵³The substance of this subsection was originally in prior §§ 7(a)(1) and 7(a)(2). The term “credit elsewhere” is defined in § 3(h). Former § 7(a)(1) used phrase “from non-Federal sources,” which was added by § 112(c) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

§ 7(a)(1)(B) to
§ 7(a)(2)

(ii)¹⁵⁴ **LIQUIDITY.**—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the lender determines that the borrower is unable to obtain credit elsewhere solely because the liquidity of the lender depends upon the guaranteed portion of the loan being sold on the secondary market.

(B) **BACKGROUND CHECKS.**¹⁵⁵—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958, the Administrator may verify the applicant’s criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

Background
checks.

(C)¹⁵⁶ **LENDING LIMITS OF LENDERS.**—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the sole purpose

¹⁵⁴ Paragraph 7(a)(1)(A) rewritten to add new clause (ii) by § 4(b)(1) of P.L. 114-38, approved July 28, 2015 (129 Stat. 438). Section 4(c) of P.L. 114-38 provides:

(c) **REPORTING.**—

(1) **DEFINITIONS.**—In this subsection—

- (A) the term “Administrator” means the Administrator of the Small Business Administration;
- (B) the term “business loan” means a loan made or guaranteed under section 7(a) of the Small Business Act;
- (C) the term “cancellation” means the Administrator approves a proposed business loan, but the prospective borrower determines not to take the business loan; and
- (D) the term “net dollar amount of business loans” means the difference between the total dollar amount of business loans and the total dollar amount of cancellations.

(2) **REQUIREMENT.**—During the 3-year period beginning on the date of enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Appropriations of the Senate and the Committee on Small Business and the Committee on Appropriations of the House of Representatives a quarterly report regarding the loan programs carried out under section 7(a) of the Small Business Act, which shall include—

- (A) for the fiscal year during which the report is submitted and the 3 fiscal years before such fiscal year—
 - (i) the weekly total dollar amount of business loans;
 - (ii) the weekly total dollar amount of cancellations;
 - (iii) the weekly net dollar amount of business loans—
 - (I) for all business loans; and
 - (II) for each category of loan amount described in clause (i), (ii), or (iii) of section 7(a)(18) of the Small Business Act.
- (B) for the fiscal year during which the report is submitted—
 - (i) the amount of remaining authority for business loans, in dollar amount and as a percentage; and
 - (ii) estimates of the date on which the net dollar amount of business loans will reach the maximum for such business loans based on daily net lending volume and extrapolations based on year to date net lending volume, quarterly net lending volume, and quarterly growth trends;
 - (C) the number of early defaults (as determined by the Administrator) during the quarter covered by the report;
 - (D) the total amount paid by borrowers in early default during the quarter covered by the report, as of the time of purchase of the guarantee;
 - (E) the number of borrowers in early default that are franchisees;
 - (F) the total amount of guarantees purchased by the Administrator during the quarter covered by the report; and
 - (G) a description of the actions the Administrator is taking to combat early defaults administratively and any legislative action the Administrator recommends to address early defaults.

¹⁵⁵ New subparagraph 7(a)(1)(B) added by § 231(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2606).

¹⁵⁶ New subparagraph 7(a)(1)(C) added by § 4(b)(2) of P.L. 114-38, approved July 28, 2015 (129 Stat. 438).

for requesting the guarantee is to allow the lender to exceed the legal lending limit of the lender. § 7(a)(2)(A) to § 7(a)(2)(B)

(2)¹⁵⁷ LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

SBA participation.

(A) IN GENERAL.—Except as provided in subparagraphs (B), (D), and (E)¹⁵⁸, in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

¹⁵⁷Paragraph 7(a)(2) was rewritten by § 2 of P.L. 104-36, approved Oct. 12, 1995, (109 Stat. 295). Section 8 of P.L. 104-36 provides:

- (a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act do not apply with respect to any loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act.
- (b) EXCEPTIONS.—The amendments made by this Act apply to a loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act, if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act.

For legislative history of former § 7(a)(2), see prior versions of this Handbook. Text of former § 7(a)(2) is set out below:

- (2) In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration, except as provided in paragraph (6), shall be:
 - (A) not less than 90 percent of the balance of the financing outstanding at the time of disbursement if such financing does not exceed \$155,000: Provided, That the percentage of participation by the Administration may be reduced below 90 percent upon request of the participating lender ; and
 - (B) subject to the limitation in paragraph (3) –
 - (i) not less than 70 percent nor more than 85 percent of the financing outstanding at the time of disbursement if such financing exceeds \$155,000: Provided, That the participation by the Administration may be reduced below 70 percent upon request of the participating lender;
 - (ii) not less than 75 percent of the financing outstanding at the time of disbursement, if such financing is more than \$155,000 and the period of maturity of such financing is more than 10 years, except that the participation by the Administration may be reduced below 75 percent upon request of the participating lender;
 - (iii) not less than 85 percent of the financing outstanding at the time of disbursement, if such financing is more than \$155,000 and the period of maturity of such financing is 10 years or less, except that the participation by the Administration may be reduced below 85 percent upon request of the participating lender; and
 - (iv) not less than 85 percent nor more than 90 percent of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (14) or (16).

The Administration shall not use the percent of guarantee requested as a criterion for establishing priorities in approving guarantee requests nor shall the Administration reduce the percent guaranteed to less than the above specified percentums other than by determination made on each application. Notwithstanding subparagraphs (A) and (B), the Administration's participation under the Preferred Lenders Program or any successor thereto shall be not less than 70 percent, unless a lesser percent is required by clause (B)(ii) or upon the request of the participating lender. As used in this subsection, the term "Preferred Lenders Program" means a program under which a written agreement between the lender and the Administration delegates to the lender (I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration, and (II) authority to service and liquidate such loans. The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, which is made applicable to other loan guarantees under section 7(a).

¹⁵⁸ References to subparagraphs (D) and (E) added by § 1206 (a)(2)(A) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2530). Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of

SMALL BUSINESS ACT

(i) 75¹⁵⁹ percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds \$150,000;¹⁶⁰ or

§ 7(a)(2)(B)(i) to
§ 7(a)(2)(D)

(ii) 85¹⁶¹ percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to \$150,000.

(B) REDUCED PARTICIPATION UPON REQUEST.—

(i) IN GENERAL.—The guarantee percentage specified by subparagraph (A) for any loan under this subsection may be reduced upon the request of the participating lender.

(ii) PROHIBITION.—The Administration shall not use the guarantee percentage requested by a participating lender under clause (i) as a criterion for establishing priorities in approving loan guarantee requests under this subsection.

(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAM.—

(i) IN GENERAL.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, applicable to other loans guaranteed under this subsection.

(ii)¹⁶² EXPORT-IMPORT BANK LENDERS.—Any lender that is participating in the Delegated Authority Lender Program of the Export-Import Bank of the United States (or any successor to the Program) shall be eligible to participate in the Preferred Lenders Program.

Export-
Import Bank
lenders.

(iii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term “Preferred Lenders Program” means any program established by the Administrator, as authorized under the proviso in section 5(b)(7), under which a written agreement between the lender and the Administration delegates to the lender—

“Preferred
Lenders
Program.”

enactment of this Act.”

¹⁵⁹ Percentage changed from 75% by § 1111(a)(1)(A) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2507). Section 1111(b)(1)(A) provides that the percentage will revert to 75% effective January 1, 2011.

¹⁶⁰ Amount changed from \$100,000 by § 202(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

¹⁶¹ Percentage changed from 80% to 85% and amount changed from \$100,000 by § 202(2)(A) and (B), respectively, of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Percentage changed from 85% by § 1111(a)(1)(B) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2507). Section 1111(b)(1)(B) provides that the percentage will revert to 85% effective January 1, 2011.

¹⁶² Clause (ii) redesignated as (iii) and new clause 7(a)(2)(C)(ii) added by § 1206(e) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2531). Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of enactment of this Act.”

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(I) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration; and

(II) complete authority to service and liquidate such loans¹⁶³ without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

§ 7(a)(2)(E) to
§ 7(a)(3)(B)
Working
Capital
Program.

(D)¹⁶⁴ PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.— In¹⁶⁵ an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall be 90 percent.

(E)¹⁶⁶ PARTICIPATION IN INTERNATIONAL TRADE LOAN.— In an agreement to participate in a loan on a deferred basis under paragraph (16), the participation by the Administration may not exceed 90 percent.

(3)¹⁶⁷ No loan shall be made under this subsection—

¹⁶³Language following the footnote signal (and word “complete”) added by § 103(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-726).

¹⁶⁴Paragraph 7(a)(2)(D) added by § 111 of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-733).

¹⁶⁵ Phrase “Notwithstanding subparagraph (A), in” deleted by § 1206(a)(2)(B) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2530). Section 1206(d)(1) of that law changed “not exceed” to “be”. Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of enactment of this Act.”

¹⁶⁶ New subparagraph 7(a)(2)(E) added by § 1206(a)(2)(C) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2530). Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of enactment of this Act.”

¹⁶⁷Paragraph 7(a)(3) rewritten by paragraph 8007(a)(2) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1560). Prior language of paragraph 7(a)(3) read:

No loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed \$500,000: Provided, That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed \$350,000.

The loan limit was raised from \$350,000 to \$500,000 by § 111 of P.L. 94-305, approved June 4, 1976 (90 Stat. 663).

Section 8(a) of P.L. 108-217, approved April 5, 2004 (118 Stat. 594), provides:

TEMPORARY INCREASE IN AMOUNT PERMITTED TO BE OUTSTANDING AND COMMITTED.—During the period beginning on the date of the enactment of this Act and ending on September 30, 2004, section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)) shall be applied as if the first dollar figure were \$1,500,000.

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(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this Act would exceed \$3,750,000 (or if the gross loan amount would exceed \$5,000,000),¹⁶⁸ ~~except as provided in subparagraph (B);~~

§ 7(a)(3)(C) to

§ 7(a)(4)(B)(i)

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this Act would exceed \$4,500,000¹⁶⁹ (or if the gross loan amount would exceed \$5,000,000), of which not more than \$4,000,000¹⁷⁰ may be used for working capital, supplies or financings under section 7(a)(14) for export purposes; and

(C) if effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed \$350,000.

(4) INTEREST RATES AND PREPAYMENT CHARGES.—

(A) INTEREST RATES.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection¹⁷¹ shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum:¹⁷² Provided, That for those loans to assist any

Interest rates.

¹⁶⁸ Amount changed to \$1,500,000 from \$1,000,000 by § 103(a) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-636). Section 103(b) provides that the effective date of the change is the date of enactment of the act, Dec. 8, 2004. Amount changed to \$1,000,000 from \$750,000 and parenthetical added by § 203 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Amounts changed to \$4,500,000 and \$5,000,000 by § 1111(a)(2) of P.L. 111-240, approved Sept. 27, 2010. (124 Stat. 2507). Section 1111(b)(2) provides that \$4,500,000 will revert to \$3,750,000 effective January 1, 2011.

¹⁶⁹ Amount changed from \$1,750,000 and parenthetical added by § 1206(a)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2530). Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of enactment of this Act.” Amount changed from \$1,250,000 to \$1,750,000 by § 107(b)(1) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-638). Amount changed from \$1,000,000 to \$1,250,000 by § 210 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4182). The same section also changed the amount to be allowed for working capital, supplies or revolving lines of credit from \$250,000 and provided that such amount would not be in addition to the \$1,250,000 limit.

¹⁷⁰ Amount changed from \$1,250,000 by § 1206(a)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2530). Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of enactment of this Act.” Amount changed from \$750,000 to \$1,250,000 by § 107(b)(2) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-638).

¹⁷¹The first clause of this paragraph was added by § 104 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 988). The previous language read: “The rate of interest on financings made on a deferred basis shall be legal and reasonable but.”

¹⁷²Section 7(a)(4) was completely rewritten by § 1902 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 768). See § 8 of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742) for prior text. The original Act (see footnote 1) provided an interest rate limit

public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.¹⁷³

(B)¹⁷⁴ PAYMENT OF ACCRUED INTEREST.—

(i) IN GENERAL.—Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent. § 7(a)(4)(B)(ii) to § 7(a)(5)

(ii) LOANS SOLD ON SECONDARY MARKET.—If a loan described in clause (i) is sold on the secondary market, the amount of interest paid to a bank or other lending institution described in that clause from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

(iii)¹⁷⁵ APPLICABILITY.—Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.

(C)¹⁷⁶ PREPAYMENT CHARGES.—

Prepayment charges.

(i) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

- (I) the loan is for a term of not less than 15 years;
- (II) the prepayment is voluntary;
- (III) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and
- (IV) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause (i) shall be—
of 5 1/2%.

Subsidy recoupment fee.

¹⁷³This proviso on interest rates originally provided in § 7(h)(2).

¹⁷⁴Subparagraph 7(a)(4)(B) added by § 103(f)(2) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-727).

¹⁷⁵ New clause 7(a)(4)(B)(iii) added by § 204 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

¹⁷⁶ New subparagraph 7(a)(4)(C) added by § 205(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

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(I) 5 percent of the amount of prepayment, if the borrower repays during the first year after disbursement;

(II) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

(III) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.

§ 7(a)(6) to
§ 7(a)(8)

(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.¹⁷⁷

Maximum term.

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment:¹⁷⁸ Provided, however, That—

Reasonable assurance of repayment.

(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

Handicapped loans.

(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining “sound value” shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: Provided further, That such status need not be as sound as that required for general loans under this subsection; and

Energy measures.

(C) [Repealed]¹⁷⁹

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: Provided further, That any

¹⁷⁷Substance of this provision was originally in prior § 7(a)(4)(C). Former period was ten years, with twenty years for business loans for constructing facilities. Section 103 of P.L. 90-104, approved Oct. 11, 1967 (81 Stat. 268), extended from 10 years to 15 years the maximum term of the portion of business loans made for constructing facilities. Section 108(b) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663), extended this period from 15 to 20 years. Extended to 25 years by § 1902 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357).

¹⁷⁸Language of this subsection identical to prior § 7(a)(7) up to this footnote. Provisos and remaining § 7(a)(6) were added in revisions to § 7(a) by P.L. 97-35, supra.

¹⁷⁹Section 7(a)(6)(C) was repealed Oct. 1, 1985, per “sunset” provisions of § 1910 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357).

authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.

(7) The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. Grace period.

(8)¹⁸⁰ The Administration may make loans under this subsection to small business concerns owned and controlled by disabled veterans (as defined in section 4211(3) of title 38, United States Code). Disabled § 7(a)(9) to § 7(a)(13)

(9) The Administration may provide loans under this subsection to finance residential or commercial construction or rehabilitation for sale: Provided, however, That such loans shall not be used primarily for the acquisition of land.¹⁸¹ Construction loans.

(10) The Administration may provide guaranteed¹⁸² loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual, including service-disabled veterans, in establishing, acquiring, or operating a small business concern.¹⁸³ Handicapped loans.

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 2(c) of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals. Low-income areas.

(12) (A) The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service energy measures: Provided, however, That such loan proceeds shall not be used primarily for research and development.¹⁸⁴ Energy measures.

¹⁸⁰Section 7(a)(8) was repealed Oct. 1, 1985, per “sunset” provisions of § 1910 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357). New § 7(a)(8) was added by § 706 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2637).

¹⁸¹This language as originally in initial paragraph of prior § 7(a). Section 301 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553), amended § 7(a) specifically to authorize SBA to make regular business loans to small homebuilders to finance residential or commercial construction for sale, providing such loans may not be used primarily for the acquisition of land.

¹⁸² The word “guaranteed” and the reference to service-disabled veterans added by § 401(b) of P.L. 106-50, approved August 17, 1999 (113 Stat. 244).

¹⁸³See § 3(e) for definition of “public or private organization for the handicapped” and § 3(f) for definition of “handicapped individual,” previously at § 7(h). Subsections 7(a)(10) through (13) consolidated former §§ 7(e), (h), (l) and (i), per § 1902 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 770).

¹⁸⁴See § 3(g) for definition of “energy measures,” previously at § 7(l).

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(B)¹⁸⁵ The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than \$1,000,000.

§ 7(a)(14) to
§ 7(a)(15)(A)

(13) The Administration may provide financings under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958.

Development
companies.

(14)¹⁸⁶ EXPORT WORKING CAPITAL PROGRAM.—

Export
working
capital.

(A) IN GENERAL.—The Administration may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes and¹⁸⁷ other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable.

(B)¹⁸⁸ TERMS.—

(i) LOAN AMOUNT.—The Administrator may not guarantee a loan under this paragraph of more than \$5,000,000.

(ii) FEES.—

(I) IN GENERAL.—For a loan under this paragraph, the Administrator shall collect the fee assessed under paragraph (23) not more frequently than once each year.

(II) UNTAPPED CREDIT.—The Administrator may not assess a fee on capital that is not accessed by the small business concern.

¹⁸⁵Section 7(a)(12)(b) [sic] added by subsection 111(c) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2995). “(B)” substituted for “(b)” by editor of this Handbook.

¹⁸⁶ Text of subparagraph 7(a)(14)(A) was originally added to beginning paragraph of § 7(a) by § 112 of P.L. 96-481, approved Oct. 21, 1980 (94 Stat. 2321) as part of “Small Business Export Expansion Act of 1980.” It was redesignated as § 7(a)(14) by § 1902 of P.L. 97-35, approved August 13, 1981. It was redesignated again as § 7(a)(14)(A) and subparagraphs (B) and (C) added by § 8005 of P.L. 100-418, approved August 23, 1988 (102 Stat. 1557).

¹⁸⁷Subparagraph 7(a)(14)(A) was amended to include standby letters of credit and other financing by § 209 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4182). The same section deleted the 3-year limitation. The term “pre-export” was deleted by § 202(1) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2818). The period for extension of credit was extended from 18 months to 3 years by § 202(2) of P.L. 101-574.

¹⁸⁸ Subparagraph 7(a)(14)(B) added by § 1206(d)(2)(D) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2531).

(C) CONSIDERATIONS.—When considering loan or guarantee applications, the Administration shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including agricultural concerns, in the export market.

(D) MARKETING.—The Administration shall aggressively market its export financing program to small businesses.

§ 7(a)(15)(A)(i) to
§ 7(a)(15)(B)(iv)(I)
Qualified
employee
trusts.

(15) (A)¹⁸⁹ The Administration may guarantee loans under this subsection

(i) to qualified employee trusts with respect to a small business concern for the purpose of purchasing, and for any transaction costs associated with purchasing,¹⁹⁰ stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern; and

(ii)¹⁹¹ to a small business concern under a plan approved by the Administrator, if the proceeds from the loan are only used to make a loan to a qualified employee trust, and for any transaction costs associated with making that loan, that results in the qualified employee trust owning at least 51 percent of the small business concern.

(B) The plan requiring the Administrator’s approval under subparagraph (A) shall be submitted to the Administration by the trustee of such trust or by the small business concern¹⁹² with its application for the guarantee. Such plan shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1954), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

(ii) there will be periodic reviews of the role in the management of such concern of employees to whose accounts stock is allocated,

Periodic
reviews.

¹⁸⁹Loan guarantees for qualified employee trusts were originally provided in prior § 7(a)(8) which was added by title V, § 505 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833). Title V of P.L. 96-302 may be cited as the “Small Business Employee Ownership Act of 1980.” Effective date was Oct. 1, 1980, per § 507 of P.L. 96-302. See § 3(c) and also page 979 of this Handbook.

¹⁹⁰ This phrase added by § 862(b)(1)(A)(i)(II) of P.L. 115-232, approved August 13, 2018 (Stat.).

¹⁹¹ Paragraph 7(a)(15)(A) rewritten to add clause (ii) by § 862(b) of P.L. 115-232, approved August 13, 2018 (Stat.).

¹⁹² Phrase “or by the small business concern” added by § 862(b)(1)(A)(ii) of P.L. 115-232, approved August 13, 2018 (Stat.).

SMALL BUSINESS ACT

(iii) there will be adequate management to assure management expertise and continuity, and

(iv)¹⁹³ with respect to a loan made to a trust, or to a

§ 7(a)(15)(A)(i)(II) to in accordance with paragraph (35)—
§ 7(a)(15)(E)(ii)

(I) a seller of the small business concern may remain involved as an officer, director, or key employee of the small business concern when a qualified employee trust or cooperative has acquired 100 percent of ownership of the small business concern; and

(II) any seller of the small business concern who remains as an owner of the small business concern, regardless of the percentage of ownership interest, shall be required to provide a personal guarantee by the Administration.

(C) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

Loan guarantee criteria, restriction.

(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

Report to Congress. (E) The Administration shall compile a separate list of applications for assistance under this paragraph, indicating which applications were accepted and which were denied, and shall report periodically to the Congress on the status of employee-owned firms assisted by the Administration, which shall include¹⁹⁴--

(i) the total number of loans made to employee-owned business concerns that were guaranteed by the Administrator under section 7(a) of the Small

¹⁹³ New clause 7(a)(15)(B)(iv) added by § 862 (b)(1)(A)(ii) of P.L. 115-232, approved August 13, 2018 (Stat.).

¹⁹⁴ Subparagraph 7(a)(15)(E) amended to include clauses (i) through (iii) by § 862(f) of P.L. 115-232, approved August 13, 2018 (Stat.). Section 862(g) of P.L. 115-232 provides:

(g) REPORT ON COOPERATIVE LENDING.—

(1) SENSE OF CONGRESS.—It is the sense of Congress that cooperatives have a unique business structure and are unable to access the lending programs of the Administration effectively due to loan guarantee requirements that are incompatible with the business structure of cooperatives.

(2) STUDY AND REPORT.—

(A) STUDY.—The Administrator, in coordination with lenders, stakeholders, and Federal agencies, shall study and recommend practical alternatives for cooperatives that will satisfy the loan guarantee requirements of the Administration.

(B) REPORT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to Congress the recommendations developed under paragraph (1) and a plan to implement such recommendations.

SMALL BUSINESS ACT

Business Act (15 U.S.C. 636(a)) or section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696), including the number of loans made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives; § 7(a)(15)(E)(ii)(I) to § 7(a)(16)

(ii) the total number of financings made to employee-owned business concerns by companies licensed under section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 696(c))[sic, should be “681(c)”], including the number of financings made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives;

(iii) any outreach and educational activities conducted by the Administration with respect to employee-owned business concerns.

(F)¹⁹⁵ A small business concern that makes a loan to a qualified employee trust under subparagraph (A)(ii) is not required to contain the same terms and conditions as the loan made to the small business concern that is guaranteed by the Administration under such subparagraph.

(G) With respect to a loan made to a qualified employee trust under this paragraph, or to a cooperative in accordance with paragraph (35), the Administrator may, as deemed appropriate, elect to not require any mandatory equity to be provided by the qualified employee trust or cooperative to make the loan.

(16)¹⁹⁶ INTERNATIONAL TRADE.—

International trade.

¹⁹⁵ New subparagraphs 7(a)(15)(F) and (G) added by § 862(b)(1)(A)(iii) of P.L. 115-232, approved August 13, 2018 (Stat.).

¹⁹⁶New paragraphs 7(a)(16) and (17) added by § 8007(a)(3) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1560). Existing paragraph 7(a)(16), added by § 18007 of P.L. 99-272, approved April 7, 1986 (100 Stat. 366), redesignated as 7(a)(18) by § 8007(a)(4) of P.L. 100-418. Paragraph 7(a)(16) rewritten by § 107 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-637). Text of former paragraph 7(a)(16) is reprinted below:

(16) (A) The Administration may guarantee loans under this paragraph to assist any eligible small business concern in an industry engaged in or adversely affected by international trade in the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade, if the Administration determines that the appropriate upgrading of plant and equipment will allow the concern to improve its competitive position. Each such loan shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan.

(B) A small business concern shall be considered to be engaged in or adversely affected by international trade for

(A) IN GENERAL.—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its competitive position, the Administrator may make such loan to assist such concern in—

(i) the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or

(ii) in the refinancing of existing indebtedness that is not structured with reasonable terms and conditions, including any debt that qualifies for refinancing under any other provision of this subsection¹⁹⁷; or

(iii)¹⁹⁸ by providing working capital.

(B) SECURITY.—

(i) IN GENERAL.—Except as provided in clause (ii), each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

(ii)¹⁹⁹ EXCEPTION.—A loan under this paragraph may be secured by a second lien position on the property or equipment financed by the loan or on other assets of the small business concern, if the Administrator determines the lien provides adequate assurance of the payment of the loan.

purposes of this provision if such concern is, as determined by the Administration in accordance with regulations that it shall develop--

- (i) in a position to significantly expand existing export markets or develop new export markets; or
- (ii) adversely affected by import competition in that it is--
 - (I) confronting increased direct competition with foreign firms in the relevant market; and
 - (II) can demonstrate injury attributable to such competition.

The last sentence of former paragraph 7(a)(16) was deleted by § 245 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2827). The deleted sentence read: “The lender shall agree to sell the loan in the secondary market as authorized in sections 5(f) and 5(g) of this Act within 180 days of the date of disbursement.”

¹⁹⁷ Language following the comma added by § 1206(b)(3)(B) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2530). Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of enactment of this Act.”

¹⁹⁸ New clause 7(a)(16)(A)(iii) added by § 1206(b)(4) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2530). Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of enactment of this Act.”

¹⁹⁹ New clause 7(a)(16)(B)(ii) added by § 1206(c)(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2530). Section 1206(h) of that law provides that the change “shall apply with respect to any loan made after the date of enactment of this Act.”

(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets. Engaged in § 7(a)(16)(D) to § 7(a)(18)

(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern— Adversely affected by international trade.

(i) is confronting increased competition with foreign firms in the relevant market; and

(ii) is injured by such competition.

(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974.

(F)²⁰⁰ LIST OF EXPORT FINANCE LENDERS.—

List of export finance lenders.

(i) PUBLICATION OF LIST REQUIRED.—The Administrator shall publish an annual list of the banks and participating lending institutions that, during the 1-year period ending on the date of publication of the list, have made loans guaranteed by the Administration under—

(I) this paragraph;

(II) paragraph (14); or

(III) paragraph (34).

(ii) AVAILABILITY OF LIST.—The Administrator shall

—
(I) post the list published under clause (i) on the website of the Administration; and

(II) make the list published under clause (i) available, upon request, at each district office of the Administration.

(17) The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

²⁰⁰ New paragraph 7(a)(16)(F) added by § 1206(g) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2532).

§ 7(a)(18)(A)

§ 7(a)(18)(A)(i) to
§ 7(a)(18)(B)(18)²⁰¹ GUARANTEE FEES.—

(A)²⁰² IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

Guarantee
fees.

(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

²⁰¹Section 7(a)(18) was rewritten by § 3 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 296). See footnote with § 7(a)(2) for language regarding applicability of P.L. 104-36 to loans made before enactment. Text of former § 7(a)(18) is set out below:

The Administration shall collect a guarantee fee equal to two percent of the amount of the deferred participation share of any loan under this subsection other than a loan repayable in one year or less. The fee shall be payable by the participating lending institution and may be charged to the borrower.

Section 7(a)(18) was rewritten again by § 206 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). The text of 7(a)(18) before this amendment is reprinted below:

(18) GUARANTEE FEES.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender and may be charged to the borrower, in an amount equal to the sum of—

- (i) 3 percent of the amount of the deferred participation share of the loan that is less than or equal to \$250,000;
- (ii) if the deferred participation share of the loan exceeds \$250,000, 3.5 percent of the difference between—
 - (I) \$500,000 or the total deferred participation share of the loan, whichever is less; and
 - (II) \$250,000; and
- (iii) if the deferred participation share of the loan exceeds \$500,000, 3.875 percent of the difference between—
 - (I) the total deferred participation share of the loan; and
 - (II) \$500,000.

(B) EXCEPTION FOR CERTAIN LOANS.—Notwithstanding subparagraph (A), if the total deferred participation share of a loan guaranteed under this subsection is less than or equal to \$80,000, the guarantee fee collected under subparagraph (A) shall be in an amount equal to 2 percent of the total deferred participation share of the loan.

Section 8(b) of P.L. 108-217, approved April 5, 2004 (118 Stat. 595), provides:

TEMPORARY GUARANTEE FEE ON DEFERRED PARTICIPATION SHARE OVER \$1,000,000.—With respect to loans made during the period referred to in subsection (a) [April 5, 2004 – Sept. 30, 2004, see footnote to § 7(a)] to which section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) applies, the Administrator of the Small Business Administration shall collect an additional guarantee fee equal to 0.25 percent of the amount (if any) by which the deferred participation share of the loan exceeds \$1,000,000.

²⁰²Section 501 of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 151) provides:

SEC. 501. FEE REDUCTIONS.

(a) ADMINISTRATIVE PROVISIONS SMALL BUSINESS ADMINISTRATION.—Until September 30, 2010, and to the extent that the cost of such elimination or reduction of fees is offset by appropriations, with respect to each loan guaranteed under section 7(a) of the Small business Act (15 U.S.C. 636(a)) and section 502 of this title, for which the application is approved on or after the date of enactment of this Act, the Administrator shall—

- (1) in lieu of the fee otherwise applicable under section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)), collect no fee or reduce fees to the maximum extent possible; and

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(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.

(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than \$1,000,000.

(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

(C)²⁰³ [Deleted.]

(2) in lieu of the fee otherwise applicable under section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), collect no fee or reduce fees to the maximum extent possible.

* * *

(c) APPLICATION OF FEE ELIMINATIONS.—

(1) To the extent that amounts are made available to the Administrator for the purpose of fee eliminations or reductions under subsection (a), the Administrator shall—

(A) first use any amounts provided to eliminate or reduce fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(B) then use any amounts provided to eliminate or reduce fees under paragraph (23)(A) paid by small business lenders with assets less than \$1,000,000,000 as of the date of enactment; and

(C) then use any remaining amounts appropriated under this title to reduce fees paid by small business lenders other than those with assets less than \$1,000,000,000.

(2) The Administrator shall eliminate fees under subsections (a) and (b) until the amount provided for such purposes, as applicable, under the heading “Business Loans Program Account” under the heading “Small Business Administration” under this act are expended.

² Subparagraph 7(a)(18)(A) rewritten by § 102(a) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-635). Text of former subparagraph 7(a)(18)(A) is reprinted below:

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

(i) A guarantee fee equal to 2 percent of the deferred participation share of a total loan amount that is not more than \$150,000.

(ii) A guarantee fee equal to 3 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.

(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.

²⁰³ Paragraph 7(a)(18)(C) deleted by § 102 (b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-635). Text of former paragraph 7(a)(18)(C) is reprinted below:

TWO-YEAR REDUCTION IN FEES.—With respect to loans approved during the 2-year period beginning on October 1, 2002, the guarantee fee under subparagraph (A) shall be as follows:

(19)²⁰⁴ (A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7), the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

Certified
Lenders
Program.

(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of \$50,000 or less in guarantees to eligible small business loan applicants,²⁰⁵ the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.²⁰⁶

-
- (i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than \$150,000.
 - (ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than \$150,000, but not more than \$700,000.
 - (iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than \$700,000.

Paragraph 7(a)(18)(C) was added by § 6(a)(1) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 970). Section 6 of that law also provides:

- (c) BUDGETARY TREATMENT OF LOANS AND FINANCINGS.—Assistance made available under any loan made or approved by the Small Business Administration under section 7(a) of the Small Business Act . . . during the 2-year period beginning on October 1, 2002, shall be treated as separate programs of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 only.
- (d) . . .
- (e) EFFECTIVE DATE.—The amendments made by this section shall become effective on October 1, 2002.

²⁰⁴Section 7(a)(19), added by subsection 302(a) of P.L. 100-533, approved Oct. 25, 1988 (102 Stat. 2693), rewritten by § (2) of P.L. 101-162, approved Nov. 21, 1989 (103 Stat. 1025).

²⁰⁵Phrase “during fiscal years 1989, 1990, and 1992” deleted by § 4 of P.L. 102-191, approved Dec. 5, 1991 (105 Stat. 1591).

²⁰⁶Sections 7(a)(19)(B)(ii) and (C) were repealed by § 3(b) of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 296). See footnote with § 7(a)(2) for language regarding applicability of P.L. 104-36 to loans made before the date of enactment. Text of former §§ 7(a)(19)(B)(ii) and (C) is set out below:

- (ii) allow such lenders to retain one-half of the fee collected pursuant to section 7(a)(18) on such loans. A participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed \$50,000 unless the amount in excess of \$50,000 is an amount not approved under the provisions of this paragraph.
- (C) In order to encourage lending institutions and other entities making loans authorized under this subsection to provide loans to small business loan applicants located in rural areas, such lenders shall be permitted to retain one-half of the fee collected pursuant to paragraph (18) on loans of less than \$75,000. A participating lender may not retain any fee pursuant to this subparagraph if the amount committed and outstanding to the applicant would exceed \$75,000 unless the amount in excess of \$75,000 is an amount not approved under the provisions of this subparagraph. This subparagraph shall cease to be effective on October 1, 1995.

(C)²⁰⁷ Authority to liquidate loans.—

§ 7(a)(19)(C)(ii) to
§ 7(a)(20)(B)(iii)

(i) IN GENERAL.—The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administration pursuant to a liquidation plan approved by the Administrator.

(ii) Automatic approval.—If the Administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

(20)²⁰⁸ (A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) and section 8(a). Such assistance may be provided only if the Administration determines that—

8(a) loans.

(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

(B) (i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed \$750,000.

(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

²⁰⁷New subparagraph 7(a)(19)(C) added by § 103(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-726).

²⁰⁸Subsection 7(a)(20) added by § 302 of P.L. 100-656, approved Nov. 15, 1988 (102 Stat. 3867), effective Oct. 1, 1989, per § 803 thereof.

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§ 7(a)(20)(B)(iv) to
§ 7(a)(21)(A)(ii)

(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(II) No direct financing may be made unless it is shown that a participation is unavailable.

(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

(i) that is subordinated by its terms to all other borrowings of the issuer;

(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

(iii) the term of which is not more than twenty-five years;
and

(iv) the principal on which amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

(21)²⁰⁹ (A) The Administration may make loans on a guaranteed basis under the authority of this subsection—

Defense economic transition loans.

(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

(I) the closure (or substantial reduction) of a Department of Defense installation; or

(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

²⁰⁹Paragraph 7(a)(21) added by § 211 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 997). The phrase “on a guaranteed basis” was added by § 605(a) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4203).

(ii) to a qualified individual or a veteran²¹⁰ seeking to establish (or acquire) and operate a small business concern.

(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

(C) Loans pursuant to this paragraph shall be authorized in such amounts as provided in advance in appropriation Acts for the purposes of loans under this paragraph.

(D) For purposes of this paragraph a qualified individual is—

(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

(ii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

(E)²¹¹ JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this paragraph, the Administration shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

Job creation.

(i) have the greatest potential for—

(I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

(II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and

(ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

Penalty fee.

²¹⁰ Reference to veterans added by § 404 of P.L. 106-50, approved August 17, 1999 (113 Stat. 246).

²¹¹ Paragraph 7(a)(21)(E) added by § 603 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4202).

(22)²¹² The Administration is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

(23)²¹³ YEARLY FEE.—

Yearly fee.

(A)²¹⁴ IN GENERAL.—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in

²¹²Subsection 7(a)(22) added by § 4 of P.L. 103-81, approved August 13, 1993 (107 Stat. 781).

²¹³New subsection 7(a)(23) added by § 4 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 296). Section 102(c)(1) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-635) changed the heading from “Annual Fee” to “Yearly Fee.”

²¹⁴ Subparagraph 7(a)(23)(A) rewritten by § 102(c)(2) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-635). Text of former subparagraph 7(a)(23)(A) is reprinted below:

IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administration shall, in accordance with such terms and procedures as the Administration shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan. With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.

Last sentence in former subparagraph 7(a)(23)(A) added by § 6(a)(2) of P.L. 107-100, approved Dec. 21, 2001 (115 Stat. 971). In addition, § 203 of P.L. 107-117, approved Jan. 10, 2002 (115 Stat. 2230), provides:

Notwithstanding any other provision of law, the limitation on the total amount of loans under section 7(b) of the Small Business Act outstanding and committed to a borrower in the disaster areas declared in response to the September 11, 2001, terrorist attacks shall be increased to \$10,000,000 and the Administrator shall, in lieu of the fee collected under section 7(a)(23)(A) of the Small Business Act, collect an annual fee of 0.25 percent of the outstanding balance of deferred participation loans made under section 7(a) to small businesses adversely affected by the September 11, 2001, terrorist attacks and their aftermath, for a period of one year following the date of enactment and to the extent the costs of such reduced fees are offset by appropriations provided by this Act.

Section 5 of P.L. 108-217, approved April 5, 2004 (118 Stat. 592) provides the following:

(a) IN GENERAL.—During the period beginning on the date of the enactment of this section and ending on September 30, 2004, subparagraph (A) of paragraph (23) of subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(7)(a)(23)(A)) shall be applied as if that subparagraph consisted of the language set forth in subsection (b).

(b) LANGUAGE SPECIFIED.—The language referred to in subsection (a) is as follows:

(A) PERCENTAGE.—

(i) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administrator shall, in accordance with such terms and procedures as the Administrator shall establish by regulation, assess and collect an annual fee in the amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan.

(ii) TEMPORARY PERCENTAGE.—With respect to loans approved during the period beginning on the date of enactment of this clause and ending on September 30, 2004, the annual fee assessed and collected under clause (i) shall be equal to 0.36 percent of the outstanding balance of the deferred participation share of the loan.

(c) RETENTION OF CERTAIN FEES.—Subparagraph (B) of paragraph (18) of subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(7)(a)(18)(B)) shall not be effective during the period beginning on the date of

an amount established once annually by the Administration in the Administration's annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term "cost" has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(B) PAYER.—The yearly²¹⁵ fee assessed under subparagraph (A) shall be payable by the participating lender and shall not be charged to the borrower.

(C)²¹⁶ LOWERING OF BORROWER FEES.—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

the enactment of this section and ending on September 30, 2004.

²¹⁵Section 501 of P.L. 111-5, approved Feb. 17, 2009 (123 Stat. 151) provides:

SEC. 501. FEE REDUCTIONS.

(a) ADMINISTRATIVE PROVISIONS SMALL BUSINESS ADMINISTRATION.—Until September 30, 2010, and to the extent that the cost of such elimination or reduction of fees is offset by appropriations, with respect to each loan guaranteed under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) and section 502 of this title, for which the application is approved on or after the date of enactment of this Act, the Administrator shall—

(1) in lieu of the fee otherwise applicable under section 7(a)(23)(A) of the Small Business Act (15 U.S.C. 636(a)(23)(A)), collect no fee or reduce fees to the maximum extent possible; and

(2) in lieu of the fee otherwise applicable under section 7(a)(18)(A) of the Small Business Act (15 U.S.C. 636(a)(18)(A)), collect no fee or reduce fees to the maximum extent possible.

* * *

(c) APPLICATION OF FEE ELIMINATIONS.—

(1) To the extent that amounts are made available to the Administrator for the purpose of fee eliminations or reductions under subsection (a), the Administrator shall—

(A) first use any amounts provided to eliminate or reduce fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(B) then use any amounts provided to eliminate or reduce fees under paragraph (23)(A) paid by small business lenders with assets less than \$1,000,000,000 as of the date of enactment; and

(C) then use any remaining amounts appropriated under this title to reduce fees paid by small business lenders other than those with assets less than \$1,000,000.

(2) the Administrator shall eliminate fees under subsections (a) and (b) until the amount provided for such purposes, as applicable, under the heading "Business Loans Program Account" under the heading "Small Business Administration" under this Act are expended.

[?] "Annual" changed to "yearly" by § 102(c)(3) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-636).

²¹⁶ New subparagraph 7(a)(23)(C) added by § 102(c)(4) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-636).

§ 7(a)(24) to
§ 7(a)(25)

(ii) fees paid by small business borrowers shall not be increased above the levels in effect on the date of enactment of this subparagraph.

(24)²¹⁷ NOTIFICATION REQUIREMENT.—The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection.

Notice to

§ 7(a)(25)(A) to
§ 7(a)(29)

(25)²¹⁸ LIMITATION ON CONDUCTING PILOT PROJECTS.—

²¹⁷New paragraph 7(a)(24) added by § 5 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297).

²¹⁸Paragraph 7(a)(25) added by § 103(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-726). Section 6 of P.L. 108-217, approved April 5, 2004 (118 Stat. 593), provides the following language entitled “Express Loan Provisions:”

(a) DEFINITIONS.—For the purposes of this section:

(1) The term “express lender” shall mean any lender authorized by the Administrator to participate in the Express Loan Pilot Program.

(2) The term “Express Loan” shall mean any loan made pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636(a)) in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(3) The term “Express Loan Pilot Program” shall mean the program established by the Administrator prior to the date of enactment of this section under the authority granted in section 7(a)(25)(B) of the Small Business Act (15 U.S.C. 636(a)(25)(B)) with a guaranty rate not to exceed 50 percent.

(4) The term “Administrator” means the Administrator of the Small Business Administration.

(5) The term “small business concern” has the same meaning given such term under section 3(a) of the Small Business Act (15 U.S.C. 632(a))

(b) RESTRICTION TO EXPRESS LENDER.—The authority to make an Express Loan shall be limited to those lenders deemed qualified to make such loans by the Administrator. Designation as an express lender for purposes of making an Express Loan shall not prohibit such lender from taking any other action authorized by the Administrator for that lender pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636(a))

(c) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administrator determines that the express lender has violated the law or regulations promulgated by the Administrator or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(d) TEMPORARY EXPANSION OF EXPRESS LOAN PILOT PROGRAM.—

(1) AUTHORIZATION.—As of the date of enactment of this section, the maximum loan amount in the Express Loan Pilot Program shall be increased to a maximum loan amount of \$2,000,000 as set forth in section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)).

(2) TERMINATION DATE.—The authority set forth in paragraph (1) shall terminate on September 30, 2004.

(3) SAVINGS PROVISION.—Nothing in this section shall be interpreted to modify or alter the authority of the Administrator to continue to operate the Express Loan Pilot Program on or after October 1, 2004.

(e) OPTION TO PARTICIPATE.—Except as otherwise provided in this section, the Administrator shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to section 7(a)(24) of the Small Business Act (15 U.S.C. 636(a)(24)), that has the effect of—

(1) requiring a lender to make an Express Loan pursuant to subsection (d);

(2) limiting or modifying any term or condition of deferred participation loans made under such section (other than Express Loans) unless the Administrator imposes the same limit or modification on Express Loans;

(3) transferring or re-allocating staff, staff responsibilities, resources, or funding, if the result of such transfer or re-allocation would be to increase the average loan processing, approval, or disbursement time above the averages for those functions as of October 1, 2003, for loan guarantees approved under such section by employees of the Administration or through the Preferred Lenders Program; or

(4) otherwise providing any incentive or disincentive which encourages lenders or borrowers to make or obtain loans

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(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

(B) PILOT PROGRAM DEFINED.—In this paragraph, the term “pilot program” means any lending program initiative, project, innovation, or other activity not specifically authorized by law. “Pilot program.”

(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of \$100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after the date of enactment of this subsection, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program. Low-Doc Program. § 7(a)(26) to § 7(a)(31)

(26)²¹⁹ CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 502 of the Federal Credit Reform Act of 1990) to the Administration of purchasing and guaranteeing loans under this Act. Subsidy rate. [2 USC 661a].

(27)²²⁰ [Repealed].

(28)²²¹ LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property. Leasing restrictions.

under the Express Loan Pilot Program instead of under the general loan authority of section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(f) COLLECTION AND REPORTING OF DATA.—For all loans in excess of \$250,000 made pursuant to the authority set forth in subsection (d)(1), the Administrator shall, to the extent practicable, collect data on the purpose for each such loan. The Administrator shall report monthly to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the number of such loans and their purposes.

(g) TERMINATION.—Subsections (b), (c), (e), and (f) shall not apply after September 30, 2004.

²¹⁹Paragraph 7(a)(26) added by § 103(d) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-727).

²²⁰Paragraph 7(a)(27), the Year 2000 Computer Problem loan guarantee program, was added by § 3(a) of P.L. 106-8, approved April 2, 1999 (113 Stat. 13). Section 3(b) of P.L. 106-8 provided for repeal of the new paragraph effective December 31, 2000.

²²¹ New paragraph 7(a)(28) added by § 207 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

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§ 7(a)(29)(A) to
§ 7(a)(31)

(29)²²² REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

Real estate appraisals.

(A) shall be required by the Administration in connection with any such loan for more than \$250,000; or

(B) may be required by the Administration or the lender in connection with any such loan for \$250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(30)²²³ OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this Act shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

Community property.

(31)²²⁴ EXPRESS LOANS.

Express loan program.

²²² New paragraph 7(a)(29) added by § 208(a) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

²²³ New paragraph 7(a)(30) added by § 208(a) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

²²⁴ New paragraph 7(a)(31) added by § 101(a) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-634). Subsection 101(b) of that law provides that the amendment made by subsection (a) shall take effect on the date of enactment of this Act. Section 4(a) of P.L. 108-217, approved April 5, 2004 (118 Stat. 591), reads as follows:

IN GENERAL.—During the period beginning on the date of the enactment of this section and ending on September 30, 2004, subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(a)) shall be applied as if the paragraph set forth in subsection (b) were added at the end of that subsection (a).

Subsection 4(b) of P.L. 108-217 set out the language temporarily inserted at § 7(a)(31):

COMBINATION FINANCING.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “combination financing” means financing comprised of a loan guaranteed under this subsection and a commercial loan; and

(ii) the term “commercial loan” means a loan which is part of a combination financing and no portion of which is guaranteed by the Federal Government.

(B) APPLICABILITY.—This paragraph applies to a loan guarantee obtained by a small business concern under this subsection, if the small business concern also obtains a commercial loan.

(C) COMMERCIAL LOAN AMOUNT.—In the case of any combination financing, the amount of the commercial loan which is part of such financing shall not exceed the gross amount of the loan guaranteed under this subsection which is part of such financing.

(D) COMMERCIAL LOAN PROVISIONS.—The commercial loan obtained by the small business concern—

(i) may be made by the participating lender that is providing financing under this subsection or by a different;

(ii) may be secured by a senior lien; and

(iii) may be made by a lender in the Preferred Lenders Program, if applicable.

(E) COMMERCIAL LOAN FEE.—A one-time fee in an amount equal to 0.7 percent of the amount of the commercial loan shall be paid by the lender to the Administration if the commercial loan has a senior credit position to that of the loan guaranteed under this subsection. Paragraph (23)(B) shall apply to the fee established by this paragraph.

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(A) DEFINITIONS.—As used in this paragraph:

(i)²²⁵ The term “disaster area” means the area for which the President has declared a major disaster, during the 5-year period beginning on the date of the declaration. “Disaster area.”

(ii) The term “express lender” means any lender authorized by the Administration to participate in the Express Loan Program. “Express lender.”

(iii) The term “express loan” means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation. “Express loan.”

(iv) The term “Express Loan Program” means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guaranty rate of not more than 50 percent. “Express Loan Program.”

(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

(C) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administration determines that the express lender has violated the law or regulations promulgated by the Administration or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is \$350,000²²⁶. Maximum loan amount.

(F) DEFERRED PARTICIPATION LOAN SECURITY.—A loan guaranteed under this subsection may be secured by a subordinated lien.

(G) COMPLETION OF APPLICATION PROCESSING.—The Administrator shall complete processing of an application for combination financing under this paragraph pursuant to the program authorized by this subsection as it was operating on October 1, 2003.

(H) BUSINESS LOAN ELIGIBILITY.—Any standards prescribed by the Administrator relating to the eligibility of small business concerns to obtain combination financing under this subsection which are in effect on the date of the enactment of this paragraph shall apply with respect to combination financings made under this paragraph. Any modifications to such standards by the Administrator after such date shall not unreasonably restrict the availability of combination financing under this paragraph relative to the availability of such financing before such modifications.

²²⁵ Clauses 7(a)(31)(A)(i) – (iii) redesignated as (ii) – (iv) and new clause (i) added by § 2106(1) of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 693).

²²⁶ Amount changed from \$350,000 to \$1,000,000 by § 1135(a) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2520). Section 1135(b) of that law provides: “(b) PROSPECTIVE REPEAL.—Effective 1 year after the date of enactment of this

(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).

(F)²²⁷ EXPRESS LOANS FOR RENEWABLE ENERGY AND ENERGY EFFICIENCY.—

(i) DEFINITIONS.—In this subparagraph—

(I) the term “biomass”— “Biomass.”

(aa) means any organic material that is available on a renewable or recurring basis, including—

(AA) agricultural crops;

production;

(BB) trees grown for energy

and grasses);

(CC) wood waste and wood residues;

materials; and

(DD) plants (including aquatic plants

recycled fats, oils, and greases); and

(EE) residues;

(FF) fibers;

(GG) animal wastes and other waste

or

(HH) fats, oils, and greases (including

(bb) does not include—

(AA) paper that is commonly recycled;

(BB) unsegregated solid waste;

Act, section 7(a)(31)(D) of the Small Business Act (15 U.S.C. 636(a)(31)(D)) is amended by striking ‘\$1,000,000’ and inserting ‘\$350,000’.

²²⁷ New subparagraph 7(a)(31)(F) added by § 1201 of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1764).

- (II) the term “energy efficiency project” means the installation or upgrading of equipment that results in a significant reduction in energy usage; and “Energy efficiency project.”
- (III) the term “renewable energy system” means a system of energy derived from— “Renewable energy system.”
- (aa) a wind, solar, biomass (including biodiesel), or geothermal source; or
- (bb) hydrogen derived from biomass or water using an energy source described in item (aa).
- (ii) LOANS.—The Administrator may make a loan under the Express Loan Program for the purpose of—
- (I) purchasing a renewable energy system; or
- (II) carrying out an energy efficiency project for a small business concern.

(G)²²⁸ GUARANTEE FEE WAIVER FOR VETERANS.—

- (i) GUARANTEE FEE WAIVER.—The Administrator may not collect a guarantee fee described in paragraph (18) in connection with a loan made under this paragraph to a veteran or spouse of a veteran on or after October 1, 2015.
- (ii) EXCEPTION.—If the President’s budget for the upcoming fiscal year, submitted to Congress pursuant to section 1105(a) of title 31, United States Code, includes a cost for the program established under this subsection that is above zero, the requirements of clause (i) shall not apply to loans made during such upcoming fiscal year.
- (iii) DEFINITION.—In this subparagraph, the term “veteran or spouse of a veteran” means— “Veteran or spouse of a veteran.”

- (I) a veteran, as defined in section 3(q)(4);
- (II) an individual who is eligible to participate in the Transition Assistance Program established under section 1144 of title 10, United States Code;

²²⁸ New subparagraph 7(a)(31)(G) added by § 2 of P.L. 114-38, approved July 28, 2015 (129 Stat. 437).

§ 7(a)(31)(G)(iii)(IV) to
 § 7(a)(31)(H)(vi)(II)

(III) a member of a reserve component of the Armed Forces named in section 10101 of title 10, United States Code;

(IV) the spouse of an individual described in subclause (I), (II), or (III); or

(V) the surviving spouse (as defined in section 101 of title 38, United States Code) of an individual described in subclause (I), (II), or (III) who died while serving on active duty or as a result of a disability that is service-connected (as defined in such section).

(H)²²⁹ RECOVERY OPPORTUNITY LOANS.—

(i) IN GENERAL.—The Administrator may guarantee an express loan to a small business concern located in a disaster area in accordance with this subparagraph.

(ii) MAXIMUMS.—For a loan guaranteed under clause (i)

(I) the maximum loan amount is \$150,000; and

(II) the guarantee rate shall be not more than 85 percent.

(iii) OVERALL CAP.—A loan guaranteed under clause (i) shall not be counted in determining the amount of loans made to a borrower for purposes of subparagraph (D).

(iv) OPERATIONS.—A small business concern receiving a loan guaranteed under clause (i) shall certify that the small business concern was in operation on the date on which the applicable major disaster occurred as a condition of receiving the loan.

(v) REPAYMENT ABILITY.—A loan guaranteed under clause (i) may only be made to a small business concern that demonstrates, to the satisfaction of the Administrator, sufficient capacity to repay the loan.

(vi) TIMING OF PAYMENT OF GUARANTEES.—

(I) IN GENERAL.—Not later than 90 days after the date on which a request for purchase is filed with the Administrator, the Administrator shall determine whether to pay the guaranteed portion of the loan.

²²⁹ Subparagraph 7(a)(31)(H) added by § 2106(2) of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 693).

§ 7(a)(31)(H)(vii) to
§ 7(a)(32)(C)

(II) RECAPTURE.—Notwithstanding any other provision of law, unless there is a subsequent finding of fraud by a court of competent jurisdiction relating to a loan guaranteed under clause (i), on and after the date that is 6 months after the date on which the Administrator determines to pay the guaranteed portion of the loan, the Administrator may not attempt to recapture the paid guarantee.

(vii) FEES.—

(I) IN GENERAL.—Unless the Administrator has waived the guarantee fee that would otherwise be collected by the Administrator under paragraph (18) for a loan guaranteed under clause (i), and except as provided in subclause (II), the guarantee fee for the loan shall be equal to the guarantee fee that the Administrator would collect if the guarantee rate for the loan was 50 percent.

(II) EXCEPTION.—Subclause (I) shall not apply if the cost of carrying out the program under this subsection in a fiscal year is more than zero and such cost is directly attributable to the cost of guaranteeing loans under clause (i).

(viii) RULES.—Not later than 270 days after the date of enactment of this subparagraph, the Administrator shall promulgate rules to carry out this subparagraph.

(32)²³⁰ LOANS FOR ENERGY EFFICIENT TECHNOLOGIES.—

(A) DEFINITIONS.—In this paragraph—

(i) the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a); “Cost.” [2 USC 661a]

(ii) the term “covered energy efficiency loan” means a loan — “Covered energy efficiency loan.”

(I) made under this subsection; and

(II) the proceeds of which are used to purchase energy efficient designs, equipment, or fixtures, or to reduce the energy consumption of the borrower by 10 percent or more; and

(iii) the term “pilot program” means the pilot program established under subparagraph (B). “Pilot program.”

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for covered energy efficiency loans.

²³⁰ New subsection 7(a)(32) added by § 1202 of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1765).

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§ 7(a)(32)(D) to

§ 7(a)(32)(F)(i)

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

(D) MAXIMUM PARTICIPATION.—A covered energy efficiency loan shall include the maximum participation levels by the Administrator permitted for loans made under this subsection.

(E) FEES.—

(i) IN GENERAL.—The fee on a covered energy efficiency loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual rate of default of covered energy efficiency loans exceeds that of loans made under this subsection that are not covered energy efficiency loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making covered energy efficiency loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—The Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not covered energy efficiency loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit

to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

(I) the number of covered energy efficiency loans for which fees were reduced under the pilot program;

(II) a description of the energy efficiency savings with the pilot program;

(III) a description of the impact of the pilot program on the program under this subsection;

(IV) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(V) recommendations for improving the pilot program.

(33)²³¹ INCREASED VETERAN PARTICIPATION PROGRAM.—

Increased veteran participation program.

(A) DEFINITIONS.—In this paragraph—

(i) the term “cost” has the meaning given that term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a);

“Cost.”
[2 USC 661a]

(ii) the term “pilot program” means the pilot program established under subparagraph (B); and

“Pilot program.”

(iii) the term “veteran participation loan” means a loan made under this subsection to a small business concern owned and controlled by veterans of the Armed Forces or members of the reserve components of the Armed Forces.

“Veteran participation loan.”

(B) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for veteran participation loans.

(C) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date that the Administrator establishes the pilot program.

²³¹ A second paragraph 7(a)(32) was added by § 208 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 631). Renumbered as 7(a)(33) by § 1133(a)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2514).

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§ 7(a)(33)(E)(i) to
§ 7(a)(33)(F)(ii)(I)

(D) MAXIMUM PARTICIPATION.—A veteran participation loan shall be subject to the maximum participation levels by the Administrator permitted for loans under this subsection.

(E) FEES.—

Fees.

(i) IN GENERAL.—The fee on a veteran participation loan shall be equal to 50 percent of the fee otherwise applicable to that loan under paragraph (18).

(ii) WAIVER.—The Administrator may waive clause (i) for a fiscal year if—

(I) for the fiscal year before that fiscal year, the annual estimated rate of default of veteran participation loans exceeds that of loans made under this subsection that are not veteran participation loans;

(II) the cost to the Administration of making loans under this subsection is greater than zero and such cost is directly attributable to the cost of making veteran participation loans; and

(III) no additional sources of revenue authority are available to reduce the cost of making loans under this subsection to zero.

(iii) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under clause (ii), the Administrator—

(I) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this subsection is not greater than zero; and

(II) shall reinstate the fee reductions under clause (i) when the conditions in clause (ii) no longer apply.

(iv) NO INCREASE OF FEES.—the Administrator shall not increase the fees under paragraph (18) on loans made under this subsection that are not veteran participation loans as a direct result of the pilot program.

(F) GAO REPORT.—

(i) IN GENERAL.—Not later than 1 year after the date that the pilot program terminates, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small business and Entrepreneurship of the Senate a report on the pilot program.

(ii) CONTENTS.—The report submitted under clause (i) shall include—

- (I) the number of veteran participation loans ^{§ 7(a)(33)(F)(ii)(II) to § 7(a)(34)(A)(i)(III)} which fees were reduced under the pilot program;
- (II) a description of the impact of the pilot program on the program under this subsection;
- (III) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and
- (IV) recommendations for improving the pilot program.

(34)^{232 233} EXPORT EXPRESS PROGRAM.—

Export express program.

(A) DEFINITIONS.—In this paragraph—

- (i) the term “export development activity” includes—
 - (I) obtaining a standby letter of credit when required as a bid bond, performance bond, or advance payment guarantee;

“Export development activity.”

²³² New paragraph 7(a)(34) added by § 1133(a)(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2514). Section 1133(b) of that law provides: “(b) SUNSET.—Effective September 30, 2013, section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended—(1) by striking paragraph (34); and (2) by redesignating paragraph (35), as added by section 1206 of this Act, as paragraph (34).” Text of paragraph (34) as added by P.L. 111-240 reprinted below:

FLOOR PLAN FINANCING PROGRAM.—

(A) DEFINITION.—In this paragraph, the term “eligible retail good”—

- (i) means a good for which a title may be obtained under State law; and
- (ii) includes an automobile, recreational vehicle, boat, and manufactured home.

(B) PROGRAM.—The Administrator may guarantee the timely payment of an open-end extension of credit to a small business concern, the proceeds of which may be used for the purchase of eligible retail goods for resale.

(C) AMOUNT.—An open-end extension of credit guaranteed under this paragraph shall be in an amount not less than \$500,000 and not more than \$5,000,000.

(D) TERM.—An open-end extension of credit guaranteed under this paragraph shall have a term of not more than 5 years.

(E) GUARANTEE PERCENTAGE.—The Administrator may guarantee—

- (i) not less than 60 percent of an open-end extension of credit under this paragraph; and
- (ii) not more than 75 percent of an open-end extension of credit under this paragraph.

(F) ADVANCE RATE.—The lender for an open-end extension of credit guaranteed under this paragraph may allow the borrower to draw funds on the line of credit in an amount equal to not more than 100 percent of the value of the eligible retail goods to be purchased.

²³³ New paragraph 7(a)(35) added by § 1206(f) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2531). Section 1206(h) of that law provides: “The amendments made by subsections (a) through (f) shall apply with respect to any loan made after the date of enactment of this Act.”

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(II) participation in a trade show that takes place

outside the United States;

(III) translation of product brochures or catalogues

for use in markets outside the United States;

(IV) obtaining a general line of credit for export

purposes;

(V) performing a service contract from buyers

located outside the United States;

(VI) obtaining transaction-specific financing

associated with completing export orders;

(VII) purchasing real estate or equipment to be used

in the production of goods or services for export;

(VIII) providing term loans or other financing to

enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

(IX) acquiring, constructing, renovating,

modernizing, improving, or expanding a production facility or equipment to be used in the United States in the production of goods or services for export; and

(ii) the term “express loan” means a loan in which a lender uses to the maximum extent practicable the loan analyses, procedures, and documentation of the lender to provide expedited processing of the loan application.

“Express loan.”

(B) **AUTHORITY.**—The Administrator may guarantee the timely payment of an express loan to a small business concern made for an export development activity.

(C) **LEVEL OF PARTICIPATION.**—

(i) **MAXIMUM AMOUNT.**—the maximum amount of an express loan guaranteed under this paragraph shall be \$500,000.

(ii) **PERCENTAGE.**—For an express loan guaranteed under this paragraph, the Administrator shall guarantee—

(I) 90 percent of a loan that is not more than \$350,000; and

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(II) 75 percent of a loan that is more than \$350,000 and not more than \$500,000.

§ 7(a)(35 to
§ 7(b)(1)(A)

(35)²³⁴ LOANS TO COOPERATIVES.—

(A) DEFINITION.—In this paragraph, the term “cooperative” means an entity that is determined to be a cooperative by the Administrator, in accordance with applicable Federal and State laws and regulations.

“Cooperative.”

(B) AUTHORITY.—The Administration shall guarantee loans made to a cooperative for the purpose described in paragraph (15).

²³⁴ New paragraph 7(a)(35) added by § 862(b)(1)(B) of P.L. 115-232, approved August 13, 2018 (Stat.).

(b)²³⁵ Except as to agricultural enterprises as defined in section 18(b)(1) of this Act, the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts— Disaster loans.

(1) (A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters.²³⁶ Provided, That such damage or destruction is not compensated for by insurance or otherwise: And provided further, That the Administration may increase the amount of the loan by up to an additional 20 per centum of the aggregate

²³⁵Sections 7(b)(1) and 7(b)(2) rewritten by § 1911 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357); the exception for agricultural enterprises was added by § 18006 of P.L. 99-272, approved April 7, 1986 (100 Stat. 366). Section 12064 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1409) provides:

(a) IN GENERAL.—The Administrator shall, promptly following the date of enactment of this Act, conduct a study of whether the standard operating procedures of the Administration for loans offered under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) are consistent with the regulations of the Administration for administering the disaster loan program.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Administrator shall submit to Congress a report containing all findings and recommendations of the study conducted under subsection (a).

The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2171).

Section 12052 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1406) contained the following definitions:
SEC. 12052. DEFINITIONS.

In this subtitle—

- (1) the terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively;
- (2) the term “disaster area” means an area affected by a natural or other disaster, as determined for purposes of paragraph (1) or (2) of section 7(b) of the Small Business Act (15 U.S.C. 636(b)), during the period of such declaration;
- (3) the term “disaster loan program of the Administration” means assistance under section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act;
- (4) the term “disaster update period” means the period beginning on the date on which the President declares a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9) of section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as added by this Act) and ending on the date on which such declaration terminates;
- (5) the term “major disaster” has the meaning given that term in section 102 of the Robert T. Stafford Disaster relief and Emergency Assistance Act (42 U.S.C. 5122);
- (6) the term “small business concern” has the meaning given that term under section 3 of the Small Business Act (15 U.S.C. 636(b)); and
- (7) the term “State” means any State of the United States, the district of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2168).

²³⁶The phrase “floods, riots or civil disorders, or other catastrophes” in § 7(b)(1)(A) was replaced by current language by subsection 119(a) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2999). Subsection 119(b) of the same Act provided the definition of “disaster” in § 3(k) of the Small Business Act.

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costs of such damage or destruction (whether or not compensated for by insurance or otherwise)²³⁷ if it determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including, including—

(i) construction of retaining walls and sea walls;

(ii) grading and contouring land; and

(iii)²³⁸ relocating utilities and modifying structures, including construction of a safe room or similar storm shelter designed to protect property and occupants from tornadoes or other natural disasters, if such safe room or similar storm shelter is constructed in accordance with applicable standards issued by the Federal Emergency Management Agency.

(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: Provided, That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere;²³⁹ (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

(C)²⁴⁰ during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or

Disaster
mitigation
pilot
program.

²³⁷ Language following “20 per centum” added by § 12078(b)(1) of P.L. 110-234, approved May 22, 2008 (122 Stat. 1415). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2177). Section 12078(b)(2) provides:

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to a loan or guarantee made after the date of enactment of this Act.

²³⁸Second proviso in subparagraph 7(b)(1)(A) added by § 121 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2999). Language after “mitigating measures” was reorganized and clause (iii) added by § 1102 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 688).

²³⁹“Credit elsewhere” defined in § 3(h).

²⁴⁰New subparagraph 7(b)(1)(C) added by § 1(a) of P.L. 106-24, approved April 27, 1999 (113 Stat. 39). Section 1(c) of P.L. 106-24 provides:

EVALUATION.—On January 31, 2003, the Administrator of the Small Business Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of the pilot program authorized by section 7(b)(1)(C) of the Small Business Act (15 U.S.C. 636(b)(1)(C)), as added by subsection (a) of this section, which report shall include—

(1) information relating to—

(A) the areas served under the pilot program;

(B) the number and dollar value of loans made under the pilot program; and

(C) the estimated savings to the Federal Government resulting from the pilot program; and

(2) such other information as the Administrator determines to be appropriate for evaluating the pilot program.

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deferred (guaranteed) basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;

(2)²⁴¹ to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis as the Administration may determine to be necessary or appropriate) to any small business concern, private nonprofit organization, or small agricultural cooperative²⁴² located in an area affected by a disaster, (including drought), with respect to both farm-related and nonfarm-related small business concerns,²⁴³ if the Administration

²⁴¹ Section 202 of P.L. 107-117, approved Jan. 10, 2002 (115 Stat. 2230) provides:

For purposes of assistance available under section 7(b)(2) [and (4)] of the Small Business Act to small business concerns located in disaster areas declared as a result of the September 11, 2001, terrorist attacks—

- (i) the term “small business concern” shall include not-for-profit institutions and small business concerns described in United States Industry Codes 522320, 522390, 523210, 523920, 523991, 524113, 524114, 524126, 524128, 524210, 524291, 524292, and 524298 of the North American Industry Classification System (as described in 13 C.F.R. 121.201, as in effect on January 2, 2001);
- (ii) the Administrator may apply such size standards as may be promulgated under such section 121.201 after the date of enactment of this provision, but no later than one year following the date of enactment of this Act; and
- (iii) payments of interest and principal shall be deferred, and no interest shall accrue during the two-year period following the issuance of such disaster loan.

Section 203 of the same act provides:

Notwithstanding any other provision of law, the limitation on the total amount of loans under section 7(b) of the Small Business Act outstanding and committed to a borrower in the disaster areas declared in response to the September 11, 2001, terrorist attacks shall be increased to \$10,000,000 and the Administrator shall, in lieu of the fee collected under section 7(a)(23)(A) of the Small Business Act, collect an annual fee of 0.25 percent of the outstanding balance of deferred participation loans made under section 7(a) to small businesses adversely affected by the September 11, 2001, terrorist attacks and their aftermath, for a period of one year following the date of enactment and to the extent the costs of such reduced fees are offset by appropriations provided by this Act.

²⁴²The phrase “small business concern or small agricultural cooperative” or similar conforming language substituted in lieu of “small business concern” throughout § 7(b)(2) by § 311 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Section 312 of P.L. 98-270 provides that this amendment shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under § 7(b)(2)(A), (B), or (C) of the Small Business Act or with respect to which a certification has been made after such date under § 7(b)(2)(D) of such Act. Note: See also § 3(j) of the Small Business Act, defining “small agricultural cooperative.” References to “private nonprofit organization” added by § 12061(a)(1) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1406). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2168).

²⁴³ Language regarding drought added by § 845(a)(2) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3390). Section 845(b) of that law provides:

(b) **LIMITATION ON LOANS.**—From funds otherwise appropriated for loans under section 7(b) of the Small Business Act (15 U.S.C. 636(b)), not more than \$9,000,000 may be used during each of fiscal years 2005 through 2008, to provide drought disaster loans to nonfarm-related small business concerns in accordance with this section

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determines that the concern, the organization, or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

(A) a major disaster, as determined by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.);²⁴⁴ [42 USC 5121].
or

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), in which case, assistance under this paragraph may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this paragraph;²⁴⁵ or

§ 7(b)(2)(D)

(C)²⁴⁶ a disaster, as determined by the Administrator of the Small Business Administration; or

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that²⁴⁷ small business concerns, private nonprofit organizations, or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Not later than 30 days after the date of receipt of such certification by a Governor of a State, the Administration shall respond in

Certification
by Governor.

and the amendments made by this section.

Section 845(d) of P.L. 109-163 provides:

(d) RULEMAKING.—Not later than 45 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall promulgate final rules to carry out this section and the amendments made by this section.

²⁴⁴The reference to the 1950 Act deleted and existing language inserted by subsection 109(f)(1) of P.L. 100-707, approved Nov. 23, 1988 (102 Stat. 4708). “Major disaster” is defined in § 102(2) of the 1974 Act, as amended by § 103(c) of P.L. 100-707, *supra*. Reference changed to the Stafford Act by § 12063(c)(2) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1409). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2171).

²⁴⁵Section 1(a) of P.L. 88-264, approved Feb. 5, 1964 (78 Stat. 7), extended paragraph (2) beyond its former scope relating solely to drought and excessive rainfall disasters. The Act referred to is now the Consolidated Farm and Rural Development Act. Language after the reference to the Consolidated Farm and Rural Development Act added by § 845(a)(2)(B) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3390).

²⁴⁶Former paragraphs (C), (D) and (E) were originally added by § 403 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553). Paragraphs (C) and (D) were amended by § 1911 of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357), which also deleted previous paragraph (E). P.L. 98-166, approved Nov. 28, 1983 (97 Stat. 1071 at 1079), provides that beginning with disasters commencing between Jan. 1, 1983, through Sept. 30, 1983, the determination of a natural disaster by the Secretary of Agriculture pursuant to 7 USC 1961 shall be deemed a disaster declaration by the Administrator of SBA for eligibility purposes under § 7(b)(1) for agricultural enterprises as defined in § 18(b) of the Small Business Act.

²⁴⁷Section 311 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157), added “or small agricultural cooperatives” here.

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writing to that Governor on its determination and the reasons therefore, and may²⁴⁸ then make such loans as would have been available under this paragraph if a disaster declaration had

§ 7(b)(3)(A) to
§ 7(b)(3)(A)(i)

Provided, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere.²⁴⁹
(3)²⁵⁰ (A) In this paragraph—

Credit elsewhere.

“Essential employee.”

²⁴⁸ The phrase “Upon receipt of such certification, the Administration may” was replaced by the current language by § 845(c) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3391).

²⁴⁹ Sections 7(b)(3) and (4), providing non-physical disaster loans to small business concerns, were repealed by § 18006(a) of P.L. 99-272, approved April 7, 1986 (100 Stat. 366). Section 18006(b) of P.L. 99-272 provides that SBA should continue to accept, process and approve loan applications under paragraphs (1) - (4) of subsection 7(b) and shall obligate and disburse loan funds on account of disasters declared before Oct. 1, 1985, even if such application is filed after April 7, 1986. P.L. 99-349, approved July 2, 1986 (100 Stat. 718), amends § 18006(b) to apply to a disaster which occurred prior to Oct. 1, 1985, and with respect to which a disaster declaration application was submitted prior to Oct. 1, 1985. The text of repealed paragraphs (3) and (4) is provided:

- (3) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate to assist any small business concern in effecting continuation of, additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods of operation made necessary by direct action of the Federal Government or as a consequence of Federal Government action or to meet requirements or restrictions imposed on such concern under any Federal law heretofore or hereafter enacted or any State law enacted in conformity therewith, or any regulation or order of a duly authorized Federal, State, regional, or local agency issued in conformity with such Federal law, if the Administration determines that such concern is likely to suffer substantial economic injury or be unable to market a product without assistance under this paragraph: Provided, That the maximum loan made to any small business concern under this paragraph shall not exceed \$500,000 and the amount thereof shall be based solely on a determination made on each application: Provided further, That no loan or guarantee shall be extended unless the Administration finds that the applicant is unable to obtain credit elsewhere. For the purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, shall be deemed to be a consequence of Federal Government Action; and
- (4) To make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary to assist, or refinance all or part of the existing indebtedness (specifically including any direct loans under section 7(a) of this Act which were made to small businesses affected by currency fluctuations and exchange freezes), of any small business concern located in an area of economic dislocation that is the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern is unable to obtain credit elsewhere. The Governor of a State may certify to the Administration (A) that small business concerns within the State have suffered substantial economic injury as a result of such economic dislocation, and (B) that such concerns are in need of financial assistance which is not available on reasonable terms. Such economic dislocations must be of such magnitude that without the benefit of disaster loans provided hereunder a significant number of otherwise financially sound small businesses in the impacted regions or business sectors would either become insolvent or be unable to return quickly to their former level of operation. No disaster loan made hereunder shall exceed \$100,000, nor shall the proceeds thereof be used to reduce the exposure of any other lender. The Administration may permit deferral of payment of principal and interest for one year on loans made hereunder.

Prior history of repealed paragraphs (3) and (4):

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- (i) the term “essential employee” means an individual § 7(b)(3)(A)(ii) to
is employed by a small business concern and whose managerial or technical expertise is § 7(b)(3)(B)
critical to the successful day-to-day operations of that small business concern;
- (ii) the term “period of military conflict” has the meaning “Period of
given the term in subsection (n)(1); and military
conflict.”
- (iii) the term “substantial economic injury” means an “Substantial
economic harm to a business concern that results in the inability of the business concern— economic
injury.”
- (I) to meet its obligations as they mature;

Former §§ 7(b)(3) - 7(b)(9) repealed by § 1913(a) of P.L. 97-35, approved Aug. 13, 1981 (95 Stat. 357). A new § 7(b)(3) was added which contained a “credit elsewhere” test. These amendments were effective Oct. 1, 1981, per § 1918 of P.L. 97-35. See also § 23(2) of the Small Business Act. The words “continuation of” after “in effecting” added by § 308 of P.L. 98-270, approved April 18, 1984, effective Oct. 1, 1983. Words “heretofore of hereafter enacted” were in prior § 7(b)(5) and were originally added by § 302 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553), to resolve the question of retroactivity of prior § 7(b)(5).

Elements of this subsection are derived from previous § 7(b)(5) which was added by § 2 of P.L. 93-237, approved Jan. 2, 1974 (87 Stat. 1023). Previous § 7(b)(5) consolidated and expanded existing SBA authority to finance small businesses required to make structural, operational and other changes by Federal laws or State laws enacted in conformity therewith, to comply with environmental, consumer, pollution, and safety standards. The section consolidated three subsections of the Small Business Act into a single section: the Coal Mine Health and Safety Act of 1969 (subsection 7(b)(5) of the Small Business Act), the Occupational Safety and Health Act of 1970 (subsection 7(b)(5)), and the Egg Product Inspection Act of 1970 (which also extended eligibility to small firms affected by the Wholesome Meat Act of 1967 and the Wholesome Poultry Products Act of 1968 (subsection 7(b)(6))). “Credit elsewhere” defined in § 3(h).

The sentence in former § 7(b)(3) relating to payment-in-kind beginning “For the purposes of this paragraph . . .” was added by § 308 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983).

Former subsection 7(b)(4) added by § 304 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983).

²⁵⁰ New paragraph 7(b)(3) added by § 402(b) of P.L. 106-50, approved August 17, 1999 (113 Stat. 245). That section further provides:

(c) ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE.—For the duration of Operation Allied Force and for 120 days thereafter, the Administration shall enhance its publicity of the availability of assistance provided pursuant to the amendments made by this section, including information regarding the appropriate local office at which affected small businesses may seek such assistance.

(d) GUIDELINES.—Not later than 30 days after the date of the enactment of this section, the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section and the amendments made by this section.

(e) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this section.

(2) DISASTER LOANS.—The amendments made by subsection (b) shall apply to economic injury suffered or likely to be suffered as the result of a period of military conflict occurring or ending on or after March 24, 1999.

(II) to pay its ordinary and necessary operating expenses; or

(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

(B) The Administration may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.²⁵¹

²⁵¹ Section 201(b) of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 627) provides:

- (1) DEFINITION.—In this subsection, the term “eligible Reservist” means a Reservist who—
 - (A) has not been ordered to active duty;
 - (B) expects to be ordered to active duty during a period of military conflict; and
 - (C) can reasonably demonstrate that the small business concern for which that Reservist is a key employee will suffer economic injury in the absence of that Reservist.
- (2) ESTABLISHMENT.—Not later than 6 months after the date of enactment of this Act, the Administrator shall establish a pre-consideration process, under which the Administrator—
 - (A) may collect all relevant materials necessary for processing a loan to a small business concern under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3)) before an eligible Reservist employed by that small business concern is activated; and
 - (B) shall distribute funds for any loan approved under subparagraph (A) if that eligible Reservist is activated.

Section 201(c) of P.L. 110-186 provides:

- (c) OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—
 - (1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Veterans Affairs and the Secretary of Defense, may develop a comprehensive outreach and technical assistance program (in this subsection referred to as the “program”) to—
 - (A) market the loans available under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3)) to Reservists, and family members of Reservists, that are on active duty and that are not on active duty; and
 - (B) provide technical assistance to a small business concern applying for a loan under that section.
 - (2) COMPONENTS.—The program shall—
 - (A) incorporate appropriate websites maintained by the Administration, the Department of Veterans Affairs, and the Department of Defense; and
 - (B) require that information on the program is made available to small business concerns directly through—
 - (i) the district offices and resource partners of the Administration, including small business development centers, women’s business centers, and the Service Corps of Retired Executives; and
 - (ii) other Federal agencies, including the Department of Veterans Affairs and the Department of Defense.
 - (3) REPORT.—
 - (A) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter until the date that is 30 months after such date of enactment, the Administrator shall submit to Congress a report on the status of the program.
 - (B) CONTENTS.—Each report submitted under subparagraph (A) shall include—
 - (i) for the 6-month period ending on the date of that report—
 - (I) the number of loans approved under section 7(b)(3) of the Small Business Act (15 U.S.C. 636(b)(3));
 - (II) the number of loans disbursed under that section; and
 - (III) the total amount disbursed under that section; and
 - (ii) recommendations, if any, to make the program more effective in serving small business concerns that employ Reservists.

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(C) A small business concern described in subparagraph (B) shall be eligible to apply for assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 1 year²⁵² after the date on which such essential employee is discharged or released from active duty. The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in the preceding sentence by not more than 1 year.

(D) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

(E) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed \$1,500,000, unless such applicant constitutes, or have [sic] become due to changed economic circumstances,²⁵³ a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the \$1,500,000 limitation.

(F) For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

§ 7(b)(3)(G)(i) to
§ 7(b)(4)(A)

(G)²⁵⁴ (i) Notwithstanding any other provision of law, the Administrator may make a loan under this paragraph of not more than \$50,000 without collateral.

(ii) The Administrator may defer payment of principal and interest on a loan described in clause (i) during the longer of—

Section 202 of P.L. 110-186 provides:

Sec. 202. RESERVIST LOANS.

(a) IN GENERAL.—the Administrator and the Secretary of Defense shall develop a joint website and printed materials providing information regarding any program for small business concerns that is available to veterans or Reservists.

(b) MARKETING.—The Administrator is authorized—

(1) to advertise and promote the program under section 7(b)(3) of the Small Business Act jointly with the Secretary of Defense and veterans' service organizations; and

(2) to advertise and promote participation by lenders in such program jointly with trade associations for banks or other lending institutions.

²⁵² “90 days” changed to “1 year” by § 201(a)(1) of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 627). The last sentence in the paragraph was added by § 201(a)(2) of the same law.

²⁵³ Language following “constitutes” added by § 12077 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1415). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2177).

²⁵⁴ New subparagraph 7(b)(3)(G) added by § 203 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 629).

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(I) the 1-year period beginning on the date of the initial disbursement of the loan; and

(II) the period during which the relevant essential employee is on active duty.

(H)²⁵⁵ The Administrator shall give priority to any application for a loan under this paragraph and shall process and make a determination regarding such applications prior to processing or making a determination on other loan applications under this subsection, on a rolling basis.

Loan application priority.

(4)²⁵⁶ COORDINATION WITH FEMA.—

(A) IN GENERAL.—Notwithstanding any other provision of law, for any disaster declared under this subsection or major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall ensure, to the maximum extent practicable, that all application periods for disaster relief under this Act correspond with application deadlines established under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), or as extended by the President.

§ 7(b)(4)(B) to § 7(b)(6)

[42 USC 5121].

(B) DEADLINES.—Notwithstanding any other provision of law, not later than 10 days before the closing date of an application period for a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that includes—

Report.

²⁵⁵ New subparagraph 7(b)(3)(H) added by § 204 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 629).

²⁵⁶ New paragraphs 7(b)(4) and (5) added by § 12063(a) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1407). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2169). Section 12063(b) provides:

(b) MARKETING AND OUTREACH.—Not later than 90 days after the date of enactment of this Act, the Administrator shall create a marketing and outreach plan that—

- (1) encourages a proactive approach to the disaster relief efforts of the Administration;
- (2) makes clear the services provided by the Administration, including contact information, application information, and timelines for submitting applications, the review of applications, and the disbursement of funds;
- (3) describes the different disaster loan programs of the Administration, including how they are made available and the eligibility requirements for each loan program;
- (4) provides for regional marketing, focusing on disasters occurring in each region before the date of enactment of this Act, and likely scenarios for disasters in each such region; and
- (5) ensures that the marketing plan is made available at small business development centers and on the website of the Administration.

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(i) the deadline for submitting applications for assistance under this Act relating to that major disaster;

(ii) information regarding the number of loan applications and disbursements processed by the Administrator relating to that major disaster for each day during the period beginning on the date on which that major disaster was declared and ending on the date of that report; and

(iii) an estimate of the number of potential applicants that have not submitted an application relating to that major disaster.

(5) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under this subsection or the Administrator declares eligibility for additional disaster assistance under paragraph (9), the Administrator shall make every effort to communicate through radio, television, print, and web-based outlets, all relevant information needed by disaster loan applicants, including—

(A) the date of such declaration;

(B) cities and towns within the area of such declaration;

(C) loan application deadlines related to such disaster;

(D) all relevant contact information for victim services available through the Administration (including links to small business development center websites);

(E) links to relevant Federal and State disaster assistance websites, including links to websites providing information regarding assistance available from the Federal Emergency Management Agency;

(F) information on eligibility criteria for Administration loan programs, including where such applications can be found; and

(G) application materials that clearly state the function of the Administration as the Federal source of disaster loans for homeowners and renters.

§ 7(b)(6)(A) to
§ 7(b)(7)(B)(i)

(6)²⁵⁷ AUTHORITY FOR QUALIFIED PRIVATE CONTRACTORS.—

(A) DISASTER LOAN PROCESSING.—The Administrator may enter into an agreement with a qualified private contractor, as determined by the

²⁵⁷ New paragraph 7(b)(6) added by § 12066(a) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1409). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2171). Section 12066(b) provides:

(b) COORDINATION OF EFFORTS BETWEEN THE ADMINISTRATOR AND THE INTERNAL REVENUE SERVICE TO EXPEDITE LOAN PROCESSING.—The Administrator and the Commissioner of Internal Revenue shall, to the maximum extent practicable, ensure that all relevant and allowable tax records for loan approval are shared with loan processors in an expedited manner, upon request by the Administrator.

Administrator, to process loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the contractor a fee for each loan processed.

(B) LOAN LOSS VERIFICATION SERVICES.—The Administrator may enter into an agreement with a qualified lender or loss verification professional, as determined by the Administrator, to verify losses for loans under this subsection in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under paragraph (9)), under which the Administrator shall pay the lender or verification professional a fee for each loan for which such lender or verification professional verifies losses.

(7)²⁵⁸ DISASTER ASSISTANCE EMPLOYEES.—

(A) IN GENERAL.—In carrying out this section, the Administrator may, where practicable, ensure that the number of full-time equivalent employees—

- (i) in the Office of the Disaster Assistance is not fewer than 800; and
- (ii) in the Disaster Cadre of the Administration is not fewer than 1,000.

(B) REPORT.—In carrying out this subsection, if the number of full-time employees for either the Office of Disaster Assistance or the Disaster Cadre of the Administration is below the level described in subparagraph (A) for that office, not later than 21 days after the date on which that staffing level decreased below the level described in subparagraph (A), the Administrator shall submit to the Committee on Appropriations and the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Appropriations and Committee on Small Business of the House of Representatives, a report

Report.

§ 7(b)(7)(B)(ii) to § 7(b)(9)

- (i) detailing staffing levels on that date;
- (ii) requesting, if practicable and determined appropriate by the Administrator, additional funds for additional employees; and
- (iii) containing such additional information, as determined appropriate by the Administrator.

(8)²⁵⁹ INCREASED LOAN CAPS.—

²⁵⁸ New paragraph 7(b)(7) added by § 12074(a) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1414). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2176).

²⁵⁹ New paragraph 7(b)(8) added by § 12078(a) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1415). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2177).

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(A) AGGREGATE LOAN AMOUNTS.—Except as provided in subparagraph (B), and notwithstanding any other provision of law, the aggregate loan amount outstanding and committed to a borrower under this subsection may not exceed \$2,000,000.

(B) WAIVER AUTHORITY.—The Administrator may, at the discretion of the Administrator, increase the aggregate loan amount under subparagraph (A) for loans relating to a disaster to a level established by the Administrator, based on appropriate economic indicators for the region in which that disaster occurred.

(9)²⁶⁰ DECLARATION OF ELIGIBILITY FOR ADDITIONAL DISASTER ASSISTANCE.—

(A) IN GENERAL.—If the President declares a major disaster, the Administrator may declare eligibility for additional disaster assistance in accordance with this paragraph.

(B) THRESHOLD.—A major disaster for which the Administrator declares eligibility for additional disaster assistance under this paragraph shall—

²⁶⁰ New paragraph 7(b)(9) added by § 12081 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1416). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2179). Section 12085 provides:

- (a) DEFINITION.—In this section, the term “program” means the expedited disaster assistance business loan program established under subsection (b).
- (b) CREATION OF PROGRAM.—The Administrator shall take such administrative action as is necessary to establish and implement an expedited disaster assistance business loan program under which the Administration may, on an expedited basis, guarantee timely payment of principal and interest, as scheduled on any loan made to an eligible small business concern under paragraph (9) of section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as added by this Act.
- (c) CONSULTATION REQUIRED.—In establishing the program, the Administrator shall consult with—
- (1) appropriate personnel of the Administration (including District Office personnel of the Administration);
 - (2) appropriate technical assistance providers (including small business development centers);
 - (3) appropriate lenders and credit unions;
 - (4) the Committee on Small Business and Entrepreneurship of the Senate; and
 - (5) the Committee on Small Business of the House of Representatives.
- (d) RULES.—(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall issue rules in final form establishing and implementing the program in accordance with this section. Such rules shall apply as provided for in this section, beginning 90 days after their issuance in final form.
- (2) CONTENTS.—The rules promulgated under paragraph (1) shall—
- (A) identify whether appropriate uses of funds under the program may include—
 - (i) paying employees;
 - (ii) paying bills and other financial obligations;
 - (iii) making repairs;
 - (iv) purchasing inventory;
 - (v) restarting or operating a small business concern in the community in which it was conducting operations prior to the applicable major disaster, or to a neighboring area, county, or parish in the disaster area; or
 - (vi) covering additional costs until the small business concern is able to obtain funding through insurance claims, Federal assistance programs, or other sources; and
 - (B) set the terms and conditions of any loan made under the program, subject to paragraph (3).
- (3) TERMS AND CONDITIONS.—A loan guaranteed by the Administration under this section—
- (A) shall be for not more than \$150,000;
 - (B) shall be a short-term loan, not to exceed 180 days, except that the Administrator may extend such term as the Administrator determines necessary or appropriate on a case-by-case basis;
 - (C) shall have an interest rate not to exceed 300 basis points above the interest rate established by the Board of Governors of the Federal Reserve System that 1 bank charges another for reserves that are lent on an overnight basis on the date the loan is made;
 - (D) shall have no prepayment penalty;
 - (E) may only be made to a borrower that meets the requirements for a loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act;
 - (F) may be refinanced as part of any subsequent disaster assistance provided under section 7(b) of the Small Business Act (15 U.S.C. 636(b)), as amended by this Act;

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(i) have resulted in extraordinary levels of casualties or damage or disruption severely affecting the population (including mass evacuations), infrastructure, environment, economy, national morale, or government functions in an area;

(ii) be comparable to the description of a catastrophic incident in the National Response Plan of the Administration, or any successor thereto, unless there is no successor to such plan, in which case this clause shall have no force or effect; and

(iii) be of such size and scope that—

§ 7(b)(9)(B)(iii)(II) to
§ 7(b)(9)(D)(ii)

(I) the disaster assistance programs under the other paragraphs under this subsection are incapable of providing adequate and timely assistance to individuals or business concerns located within the disaster area; or

(II) a significant number of business concerns outside the disaster area have suffered disaster-related substantial economic injury as a result of the incident.

(C)²⁶¹ ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

(i) IN GENERAL.—If the Administrator declares eligibility for additional disaster assistance under this paragraph, the Administrator may make such loans under this subparagraph (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administrator determines appropriate to eligible small business concerns located anywhere in the United States.

(ii) PROCESSING TIME.—

(I) IN GENERAL.—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 15 days, the Administrator

(G) may receive expedited loss verification and loan processing, if the applicant is—

(i) a major source of employment in the disaster area (which shall be determined in the same manner as under section 7(b)(3)(B) of the Small Business Act (15 U.S.C. 636(b)(3)(B))); or

(ii) vital to recovery efforts in the region (including providing debris removal services, manufactured housing, or building materials); and

(H) shall be subject to such additional terms as the Administrator determines necessary or appropriate.

(e) REPORT TO CONGRESS.—Not later than 5 months after the date of enactment of this Act, the Administrator shall report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the progress of the Administrator in establishing the program.

(f) AUTHORIZATION.—There are authorized to be appropriated to the Administrator such sums as are necessary to carry out this section.

²⁶¹ Subparagraph 7(b)(9)(C) and (D) added by § 12082 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1417). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2179).

shall give priority to the processing of such applications submitted by eligible small business concerns located inside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(II) **SUSPENSION OF APPLICATIONS FROM OUTSIDE DISASTER AREA.**—If the Administrator determines that the average processing time for applications for disaster loans under this subparagraph relating to a specific major disaster is more than 30 days, the Administrator shall suspend the processing of such applications submitted by eligible small business concerns located outside the disaster area, until the Administrator determines that the average processing time for such applications is not more than 15 days.

(iii) **LOAN TERMS.**—A loan under this subparagraph shall be made on the same terms as a loan under paragraph (2).

(D) **DEFINITIONS.**—In this paragraph—

(i) the term “disaster area” means the area for which the applicable major disaster was declared; “Disaster area.”

(ii) the term “disaster-related substantial economic harm to a business concern that results in the inability of the business concern to— § 7(b)(9)(D)(ii)(I) to § 7(b)(12)(A) substantial economic injury.”

(I) meet its obligations as it matures [sic];

(II) meet its ordinary and necessary operating expenses; or

(III) market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern because the business concern relies on materials from the disaster area or sells or markets in the disaster area; and

(iii) the term “eligible small business concern” means a small business concern— “Eligible small business concern.”

(I) that has suffered disaster-related substantial economic injury as a result of the applicable major disaster; and

(II) (aa) for which not less than 25 percent of the market share of that small business concern is from business transacted in the disaster area;

(bb) for which not less than 25 percent of an input into a production process of that small business concern is from the disaster area; or

(cc) that relies on a provider located in the disaster area for a service that is not readily available elsewhere.

(10)²⁶² REDUCING CLOSING AND DISBURSEMENT DELAYS.—The Administrator shall provide a clear and concise notification on all application materials for loans made under this subsection and on relevant websites notifying an applicant that the applicant may submit all documentation necessary for the approval of the loan at the time of application and that failure to submit all documentation could delay the approval and disbursement of the loan.

(11)²⁶³ INCREASING TRANSPARENCY IN LOAN APPROVALS.—The Administrator shall establish and implement clear, written policies and procedures for analyzing the ability of a loan applicant to repay a loan made under this subsection.

(12)²⁶⁴ ADDITIONAL AWARDS TO SMALL BUSINESS DEVELOPMENT CENTERS, WOMEN’S BUSINESS CENTERS, AND SCORE FOR R RECOVERY.—

§ 7(b)(12)(B) to
§ 7(b)(12)(H)

(A) IN GENERAL.—The Administration may provide financial assistance to a small business development center, a women’s business center described in section 29, the Service Corps of Retired Executives, or any proposed consortium of such individuals or entities to spur disaster recovery and growth of small business concerns located in an area for which the President has declared a major disaster.

(B) FORM OF FINANCIAL ASSISTANCE.—Financial assistance provided under this paragraph shall be in the form of a grant, contract, or cooperative agreement.

(C) NO MATCHING FUNDS REQUIRED.—Matching funds shall not be required for any grant, contract, or cooperative agreement under this paragraph.

(D) REQUIREMENTS.—A recipient of financial assistance under this paragraph shall provide counseling, training, and other related services, such as promoting long-term resiliency, to small business concerns and entrepreneurs impacted by a major disaster.

(E) PERFORMANCE.—

(i) IN GENERAL.—The Administrator, in cooperation with the recipients of financial assistance under this paragraph, shall establish metrics and goals for performance of grants, contracts, and cooperative agreements under this paragraph, which shall include recovery of sales, recovery of employment, reestablishment of business premises, and establishment of new small business concerns.

²⁶² Paragraph 7(b)(10) added by § 1103 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 688).

²⁶³ Paragraph 7(b)(11) added by § 1104 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 688).

²⁶⁴ Paragraph 7(b)(12) added by § 2101 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 689).

(ii) USE OF ESTIMATES.—The Administrator shall base the goals and metrics for performance established under clause (i), in part, on the estimates of disaster impact prepared by the Office of Disaster Assistance for purposes of estimating loan-making requirements.

(F) TERM.—

(i) IN GENERAL.—The term of any grant, contract, or cooperative agreement under this paragraph shall be for not more than 2 years.

(ii) EXTENSION.—The Administrator may make 1 extension of a grant, contract, or cooperative agreement under this paragraph for a period of not more than 1 year, upon a showing of good cause and need for the extension.

(G) EXEMPTION FROM OTHER PROGRAM REQUIREMENTS.—Financial assistance provided under this paragraph is in addition to, and wholly separate from, any other form of assistance provided by the Administrator under this Act.

(H) COMPETITIVE BASIS.—The Administration shall award financial assistance under this paragraph on a competitive basis. § 7(b)(13) to
§ 7(b)(14)(B)(ii)

(13)²⁶⁵ SUPPLEMENTAL ASSISTANCE FOR CONTRACTOR MALFEASANCE.—

(A) IN GENERAL.—If a contractor or other person engages in malfeasance in connection with repairs to, rehabilitation of, or replacement of real or personal property relating to which a loan was made under this subsection and the malfeasance results in substantial economic damage to the recipient of the loan or substantial risks to health or safety, upon receiving documentation of the substantial economic damages or the substantial risk to health and safety from an independent loss verifier, and subject to subparagraph (B), the Administrator may increase the amount of the loan under this subsection, as necessary for the cost of repairs, rehabilitation, or replacement needed to address the cause of the economic damage or health or safety risk.

(B) REQUIREMENTS.—The Administrator may only increase the amount of a loan under subparagraph (A) upon receiving an appropriate certification from the borrower and person performing the mitigation attesting to the reasonableness of the mitigation costs and an assignment of any proceeds received from the person engaging in the malfeasance. The assignment of proceeds recovered from the person engaging in the malfeasance shall be equal to the amount of the loan under this section. Any mitigation activities shall be subject to audit and independent verification of completeness and cost reasonableness.

²⁶⁵ Paragraph 7(b)(13) added by § 2107 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 694).

(14)²⁶⁶ BUSINESS RECOVERY CENTERS.—

(A) IN GENERAL.—The Administrator, acting through the district offices of the Administration, shall identify locations that may be used as recovery centers by the Administration in the event of a disaster declared under this subsection or a major disaster.

(B) REQUIREMENTS FOR IDENTIFICATION.—Each district office of the Administration shall—

(i) identify a location described in subparagraph (A) in each county, parish, or similar unit of general local government in the area served by the district office; and

§ 7(b)(15) to § 7(b)[unnumbered] (ii) ensure that the locations identified under subparagraph used as a recovery center without cost to the Government, to the extent practicable.

(15)²⁶⁷ INCREASED OVERSIGHT OF ECONOMIC INJURY DISASTER LOANS.—The Administrator shall increase oversight of entities receiving loans under paragraph (2), and may consider—

(A) scheduled site visits to ensure borrower eligibility and compliance with requirements established by the Administrator; and

(B) reviews of the use of the loan proceeds by an entity described in paragraph (2) to ensure compliance with requirements established by the Administrator.

[THE FOLLOWING PARAGRAPHS PRECEDING SUBSECTION 7(c)
APPLY TO THE ENTIRE SUBSECTION 7(b).]

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: Provided, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner²⁶⁸ or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or

²⁶⁶ Paragraph 7(b)(14) added by § 2201 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 695).

²⁶⁷ Paragraph 7(b)(15) added by § 2301(a) of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 695). Section 2301(b) of P.L. 114-88 provides:

(b) SENSE OF CONGRESS RELATING TO USING EXISTING FUNDS.—It is the sense of Congress that no additional Federal funds should be made available to carry out the amendments made by this section.

²⁶⁸“Homeowners” defined in § 3(i).

destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: Provided further, That the provisions of paragraph (1) of subsection (d)²⁶⁹ of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding any other provision of law, and except as provided in subsection (d),²⁷⁰ the interest rate on the Administration's share of any loan made under subsection (b), shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: Provided, however, That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster.²⁷¹ In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding \$10,000, and 3 per centum on the amount of such loan over \$10,000 but not exceeding \$40,000. The interest rate on the Administration's share of the first \$250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than \$2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. Not later than June 1, 1978, the Administration shall

Report to Congress.

Disaster loans, interest rate.

²⁶⁹ Reference changed from “(c)” to “(d)” by § 12068(b)(2)(A) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1411). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2173).

²⁷⁰The clause “except as provided in subsection (c)” in this paragraph added by P.L. 96-38, approved July 25, 1979 (93 Stat. 97, 118). Reference is to § 7(c)(5) of this Act. Reference to “(b)” changed to “(d)” and reference to “(c)” changed to “(b)” by § 12068(b)(2)(B) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1411). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2173).

²⁷¹Section 114 of P.L. 94-305, approved June 4, 1976 (90 Stat. 663), established a uniform interest rate on SBA's share of all loans made under § 7(b). See § 9 of P.L. 93-24, approved April 20, 1973 (87 Stat. 24) at page 910 of this Handbook which is superseded insofar as it covers the interest rates on loans under §§ 7(b)(1), (2), and (4) but also provides that no portion of any such loans resulting from disasters occurring on or after April 20, 1973, is subject to cancellation. See § 120 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833), at page 981 of this Handbook, for amendments to Consolidated Farm and Rural Development Act which attempt to harmonize interest rate provisions. [Current (1989) interest rates are in § 7(c)(5)].

SMALL BUSINESS ACT

§ 7(b)[unnumbered]

prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committees of the Senate and House of Representatives having jurisdiction over measures relating to energy conservation, a report on its activities under this paragraph, including therein an evaluation of the effect of such activities on encouraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this paragraph, and its recommendations with respect to the continuation, modification, or termination of such activities²⁷²

§ 7(b)[unnumbered]

In the administration of the disaster loan program under paragraphs (1) [should probably read “or” here] (2)²⁷³ of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall be not less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other program, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall, notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of

²⁷² The part of this undesignated paragraph beginning with “Notwithstanding any other provision of law” through the end added by § 405 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). Interest rate changes made therein are retroactive and for a fixed term only.

²⁷³ Reference to paragraph (4) deleted by § 12078(c)(2)(A) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1416). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2178).

cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971, but prior to January 1, 1972, the total amount so canceled shall not exceed \$2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972, but prior to July 1, 1973, the total amount so canceled shall not exceed \$5,000, and the interest on the balance of the loan shall be at a rate of 1 per centum per annum.

With respect to any loan referred to in clause (D) which is outstanding on the date of enactment of this paragraph, the Administrator shall—

§ 7(b)[unnumbered to § 7(c)(1)(C)

(i) make such change in the interest rate on the balance of such loan as is required under that clause effective as of such date of enactment; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970.

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one-half times the original principal amount of the loan.²⁷⁴

Penalty.

(E)²⁷⁵ A State grant made on or prior to July 1, 1979, shall not be considered compensation for the purpose of applying the provisions of section 312(a) of the Disaster Relief and Emergency Assistance Act to a disaster loan under paragraph (1) [or (2)]²⁷⁶ of this subsection.

Duplication of disaster benefits. [42 USC 5155].

(c)²⁷⁷ PRIVATE DISASTER LOANS.—

²⁷⁴The matter following the numbered paragraphs of § 7(b) rewritten by § 1(a) of PL 92-385, approved Aug. 16, 1972 (86 Stat. 554). Section 1(b) of PL 92-385 provides that the paragraph which provided for a civil penalty shall apply only with respect to loans made on or after Aug. 16, 1972; and § 1(c) provides that any person who (1) suffers any loss or damage as a result of a major disaster as determined by the President which occurred prior to the date of enactment of this Act; (2) is eligible for assistance under the amendment made by subsection (a); and (3) is otherwise eligible for benefits greater than those provided by the amendment made by subsection (a), may elect to receive such greater benefits.

²⁷⁵ Section 7(b) amended by § 124 of PL 96-302, approved July 2, 1980 (94 Stat. 833) by adding to the end thereof new subparagraph (E). Section 7(b)(4) repealed by § 1913 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). The reference to PL 93-288 deleted and reference to Disaster Relief and Emergency Assistance Act substituted by § 109(f)(2) of PL 100-707, approved Nov. 23, 1988 (102 Stat. 4708).

²⁷⁶ Reference to paragraph (4) deleted by § 12078(c)(2)(B) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1416). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2178).

²⁷⁷ Subsections 7(c) and (d) renumbered as 7(d) and (e), respectively, by § 12068 of P.L. 110-234, enacted May 22, 2008 (122

SMALL BUSINESS ACT

(1) DEFINITIONS.—In this subsection—

(A) the term “disaster area” means any area for which the President declared a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9), during the period of that major disaster declaration;

“Disaster area.”

§ 7(c)(1)(C)(i) to § 7(c)(5)

(B) the term “eligible individual” means an individual who is eligible for disaster assistance under subsection (b)(1) relating to a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under subsection (b)(9);

“Eligible individual.”

(C) the term “eligible small business concern” means a business concern that is—

“Eligible small business concern.”

(i) a small business concern, as defined under this Act; or

(ii) a small business concern, as defined in section 103 of the Small Business Investment Act of 1958;

(D) the term “preferred lender” means a lender participating in the Preferred Lender Program;

“Preferred lender.”

(E) the term “Preferred Lender Program” has the meaning given that term in subsection (a)(2)(C)(ii); and

“Preferred Lender Program.”

(F) the term “qualified private lender” means any privately-owned bank or other lending institution that—

“Qualified private lender.”

(i) is not a preferred lender; and

(ii) the Administrator determines meets the criteria established under paragraph (10).

(2) PROGRAM REQUIRED.—The Administrator shall carry out a program, to be known as the Private Disaster Assistance program, under which the Administration may guarantee timely payment of principal and interest, as scheduled, on any loan made to an eligible small business concern located in a disaster area and to an eligible individual.

(3) USE OF LOANS.—A loan guaranteed by the Administrator under this subsection may be used for any purpose authorized under subsection (b).

(4) ONLINE APPLICATIONS.—

Stat. 1410). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2172). Section 12083(a) added new subsection 7(c). § 12083(b) provides that “[T]he amendments made by this section shall apply to any major disaster declared on or after the date of enactment of this Act.”

SMALL BUSINESS ACT

(A) ESTABLISHMENT.—The Administrator may establish, directly or through an agreement with another entity, an online application process for loans guaranteed under this subsection.

(B) OTHER FEDERAL ASSISTANCE.—The Administrator may coordinate with the head of any other appropriate Federal agency so that any application submitted through an online application process established under this paragraph may be considered for any other Federal assistance program for disaster relief.

(C) CONSULTATION.—In establishing an online application process under this paragraph, the Administrator shall consult with appropriate persons from the public and private sectors, including private lenders. § 7(c)(5)(A) to § 7(c)(9)

(5) MAXIMUM AMOUNTS.—

(A) GUARANTEE PERCENTAGE.—The Administrator may guarantee not more than 85 percent of a loan under this subsection.

(B) LOAN AMOUNT.—The maximum amount of a loan guaranteed under this subsection shall be \$2,000,000.

(6) TERMS AND CONDITIONS.—A loan guaranteed under this subsection shall be made under the same terms and conditions as a loan under subsection (b).

(7) LENDERS.—

(A) IN GENERAL.—A loan guaranteed under this subsection made to—

(i) a qualified individual may be made by a preferred lender; and

(ii) a qualified small business concern may be made by a qualified private lender or by a preferred lender that also makes loans to qualified individuals.

(B) COMPLIANCE.—If the Administrator determines that a preferred lender knowingly failed to comply with the underwriting standards for loans guaranteed under this subsection or violated the terms of the standard operating procedure agreement between that preferred lender and the Administration, the Administrator shall do 1 or more of the following:

(i) Exclude the preferred lender from participating in the program under this subsection.

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(ii) Exclude the preferred lender from participating in the Preferred Lender Program for a period of not more than 5 years.

(8) FEES.—

(A) IN GENERAL.—The Administrator may not collect a guarantee fee under this subsection.

(B) ORIGINATION FEE.—The Administrator may pay a qualified private lender or preferred lender an origination fee for a loan guaranteed under this subsection in an amount agreed upon in advance between the qualified private lender or preferred lender and the Administrator.

§ 7(c)(10) to
§ 7(d)(2)

(9) DOCUMENTATION.—A qualified private lender or preferred lender may use its own loan documentation for a loan guaranteed by the Administrator under this subsection, to the extent authorized by the Administrator. The ability of a lender to use its own loan documentation for a loan guaranteed under this subsection shall not be considered part of the criteria for becoming a qualified private lender under the regulations promulgated under paragraph (10).

(10) IMPLEMENTATION REGULATIONS.—

Regulations.

(A) IN GENERAL.—Not later than 1 year after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall issue final regulations establishing permanent criteria for qualified private lenders.

(B) REPORT TO CONGRESS.—Not later than 6 months after the date of enactment of the Small Business Disaster Response and Loan Improvements Act of 2008, the Administrator shall submit a report on the progress of the regulations required by subparagraph (A) to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

Report.

(11) AUTHORIZATION OF APPROPRIATIONS.—

Authorization of appropriations.

(A) IN GENERAL.—Amounts necessary to carry out this subsection shall be made available from amounts appropriated to the Administration to carry out subsection (b).

(B) AUTHORITY TO REDUCE INTEREST RATES AND OTHER TERMS AND CONDITIONS.—Funds appropriated to the Administration to carry out this subsection, may be used by the Administrator to meet the loan terms and conditions specified in paragraph (6).

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(12) PURCHASE OF LOANS.—The Administrator may enter into an agreement with a qualified private lender or preferred lender to purchase any loan guaranteed under this subsection.

(d)²⁷⁸ (1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

Terms may be extended.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b), the Administrator shall, upon the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan: Provided, That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.²⁷⁹

§ 7(d)(3) to § 7(d)(3)(C)

(3) With respect to a disaster occurring on or after October 1, 1978, and prior to the effective date of this Act,²⁸⁰ on the Administration's share of loans made pursuant to paragraph (1) of subsection (b)—

Interest rates from 10/1/78 to 8/13/81.

(A) if the loan proceeds are to repair or replace a primary residence and/or repair or replace damaged or destroyed personal property, the interest rate shall be 3 percent on the first \$55,000 of such loan;

(B) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is unable to obtain sufficient credit elsewhere, the interest rate shall be as determined by the Administration, but not in excess of 5 percent per annum; and

²⁷⁸ Subsections 7(c) and (d) renumbered as 7(d) and (e), respectively, by § 12068 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1410). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2172). Section 12083(a) of that law added new subsection 7(c).

²⁷⁹Section 7(c)(2) added by § 1(b) of PL 89-59, approved June 30, 1965 (79 Stat. 206).

²⁸⁰Previous date of “October 1, 1982” changed to “October 1, 1983” by § 119(b) of PL 96-302, approved July 2, 1980 (94 Stat. 833). The date “October 1, 1983” was then amended to read “the effective date of this Act” by § 1914 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). The “effective date of this Act” is deemed to refer to the effective date of Title XIX of PL 97-35, the Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981, i.e. Aug. 13, 1981.

(C)²⁸¹ if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is able to obtain sufficient credit elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent:

Provided, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from non-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: Provided further, That no loan

§ 7(d)(4) to
§ 7(d)(4)(D)

under subsection (b)(1) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed \$500,000²⁸² for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation.

(4)²⁸³ Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

²⁸¹Section 7(c)(3)(C) added by § 119(a) of PL 96-302, approved July 2, 1980 (94 Stat. 833). This amendment shall not apply to any disaster which commenced on or before the effective date of PL 96-302 (i.e. July 2, 1980) per § 119(d) of PL 96-302.

²⁸²Public Law 103-75, approved Aug. 12, 1993 (107 Stat. 740), provides:

[N]otwithstanding any other provisions of law, the \$500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to \$1,500,000 for disasters commencing on or after April 1, 1993.

While Congress may have intended this to be a permanent change, the language appears only in a supplemental appropriations act and does not amend the Small Business Act.

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act. Loans under this subparagraph shall be limited to a maximum term of three years.²⁸⁴ § 7(d)(5) to § 7(d)(5)(D)

(5)²⁸⁵ Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) on account of a disaster commencing on or after October 1, 1982, shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator; and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

²⁸³

²⁸³New § 7(c)(4) added by § 1912 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), provides interest rates for the § 7(b) loans described therein. "Credit elsewhere" defined in § 3(h).

²⁸⁴The following provision was deleted by § 18006(a)(2) of PL 99-272, approved April 7, 1986 (100 Stat. 366):

Such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph (1), shall be in amounts equal to 100 percent of loss if the applicant is a homeowner and 85 percent of loss if the applicant is a business or otherwise. The interest rates for loans made under paragraphs (1) and (2), as determined pursuant to this paragraph (4), shall be the rate of interest which is in effect on the date the disaster commenced: Provided, That no loan under paragraphs (1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under this subsection would exceed \$500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation.

²⁸⁵New §§ 7(c)(5) and 7(c)(6) added by § 301 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983).

(C) in the case of a business, private nonprofit organization,²⁸⁶ or other concern, including agricultural cooperatives,²⁸⁷ unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under section 7(a) of this Act, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of 7²⁸⁸ years.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under paragraphs 7(b)(1) and (2), as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: Provided, That no loan under paragraphs 7(b)(1) and (2) shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection 7(b) would exceed \$500,000²⁸⁹ for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the \$500,000 limitation.²⁹⁰ Employees of concerns sharing a common business premises²⁹¹ shall be aggregated in determining "major source of employment" status for nonprofit applicants owning such premises. Provided further, That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1), shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than \$100,000 for each disaster nor for any homeowner or lessee on account of loss of

²⁸⁶ Reference to "private nonprofit concern" added by § 12061(b) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1406). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2168).

²⁸⁷The phrase "business concern" was replaced by "business or other concern, including agricultural cooperatives" by § 120(b) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2999).

²⁸⁸ Term changed from 3 years to 7 years by § 531 of P.L. 112-74, approved Dec. 23, 2011 (125 Stat. 922).

²⁸⁹Public Law 103-75, approved Aug. 12, 1993 (107 Stat. 740), provides:

[N]otwithstanding any other provisions of law, the \$500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act shall be increased to \$1,500,000 for disasters commencing on or after April 1, 1993.

While Congress may have intended this to be a permanent change, the language appears only in a supplemental appropriations act and does not amend the Small Business Act.

²⁹⁰This language, added at the end of the first proviso, erroneously stated to follow at the end of the second proviso by § 309 of P.L. 98-270, approved April 18, 1984 (98 Stat. 157) (effective, as per § 313, on Oct. 1, 1983). Original enactment was § 237 of the Disaster Relief Act of 1970, PL 91-606, approved Dec. 31, 1970. See page 907 of this Handbook.

²⁹¹Grammar as in original.

SMALL BUSINESS ACT

personal property to less than \$20,000 for each disaster, such sums being in addition to any eligible refinancing: Provided further, That the Administration shall not require collateral for loans of \$25,000 or less (or such higher amount as the Administrator determines appropriate in the event of a disaster) which are made under paragraph (1) of subsection (b):²⁹² Provided further, That the Administrator, in obtaining the best available collateral for a loan of not more than \$200,000 under paragraph (1) or (2) of subsection (b) relating to damage to or destruction of the property of, or economic injury to, a small business concern, shall not require the owner of the small business concern to use the primary residence of the owner as collateral if the Administrator determines that the owner has other assets of equal quality and with a value equal to or greater than the amount of the loan that could be used as collateral for the loan: Provided further, That nothing in the preceding proviso may be construed to reduce the amount of collateral required by the Administrator in connection with a loan described in the preceding proviso or to modify the standards used to evaluate the quality (rather than the type) of such collateral.²⁹³

§ 7(d)(7) to
§ 7(d)(8)(A)(ii)

With respect to any loan which is outstanding on the date of enactment of this paragraph and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of the date of enactment.

(7)²⁹⁴ The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in section 7(b)(2) the term “an area affected by a disaster” includes any county, or county contiguous thereto, determined to be a disaster by the President, the Secretary of Agriculture or the Administrator of the Small Business Administration.

Nurseries.

(8)²⁹⁵ DISASTER LOANS FOR SUPERSTORM SANDY.—

²⁹²Third proviso in § 7(d)(6) added by § 122 of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3000). Amount changed from \$10,000 to \$14,000 and parenthetical added by § 12065 of P.L. 110-234, approved May 22, 2008 (122 Stat. 1409). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2171). Amount changed from \$14,000 to \$25,000 and “major” deleted from the parenthetical by § 2102(a) of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 690). Section 2102 of P.L. 114-88 also provides:

(b) SUNSET.—Effective on the date that is 3 years after the date of enactment of this Act, section 7(d)(6) of the Small Business Act is amended in the third proviso—

(1) by striking “\$25,000” and inserting “\$14,000”; and

(2) by inserting “major” before “disaster”.

(c) REPORT.—Not later than 180 days before the date on which the amendments made by subsection (b) are to take effect, the Administrator of the Small Business Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the effects of the amendments made by subsection (a), which shall include—

(1) an assessment of the impact and benefits resulting from the amendments; and

(2) a recommendation as to whether the amendments should be made permanent.

²⁹³ Fourth and fifth provisos added by § 2109 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 695).

²⁹⁴Section 7(c)(7) added by § 120(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2999).

²⁹⁵ Section 7(d)(8) added by § 1101 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 687).

(A) IN GENERAL.—Notwithstanding any other provision of law, and subject to the same requirements and procedures that are used to make loans pursuant to subsection (b), a small business concern, homeowner, nonprofit entity, or renter that was located within an area and during the time period with respect to which a major disaster was declared by the President under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) by reason of Superstorm Sandy may apply to the Administrator—

(i) for a loan to repair, rehabilitate, or replace property damaged or destroyed by reason of Superstorm Sandy; or

§ 7(d)(8)(B) to § 7(g) (ii) if such a small business concern has suffered substantial economic injury by reason of Superstorm Sandy, for a loan to assist such a small business concern.

(B) TIMING.—The Administrator shall select loan recipients and make available loans for a period of not less than 1 year after the date on which the Administrator carries out this authority.

(C) INSPECTOR GENERAL REVIEW.—Not later than 6 months after the date on which the Administrator begins carrying out this authority, the Inspector General of the Administration shall initiate a review of the controls for ensuring applicant eligibility for loans made under this paragraph.

(e)²⁹⁶ The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act. SBDC, funding.

(f)²⁹⁷ ADDITIONAL REQUIREMENTS FOR 7(b) LOANS.—

²⁹⁶Subsection 7(d) redesignated as 7(e) by § 12068(a) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1410). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2172). Subsection 7(d) rewritten by § 5 of PL 98-395, Small Business Development Center Improvement Act of 1984, approved Aug. 21, 1984 (98 Stat. 1366). [Former § 7(d) was originally added by § 602(c) of PL 85-699, the Small Business Investment Act of 1958, approved Aug. 21, 1958 (72 Stat. 698), then rewritten by § 9 of PL 87-305, the Small Business Act Amendments of 1961, approved Sept. 26, 1961 (75 Stat. 668), and later redesignated § 7(d)(1) by § 3 of PL 95-315, the Small Business Energy Loan Act, approved July 4, 1978 (92 Stat. 378). Section 7(d)(1) was again rewritten by § 203 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833).] Paragraph 7(d)(2) was deleted by § 107(a) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). Text of former paragraph 7(d)(2) is reprinted below:

(2) The Administration is authorized to hold seminars throughout the Nation to make potential applicants aware of the opportunities available under this subsection and related government energy programs, and to make grants to qualified organizations to provide training seminars for small business concerns regarding practical and easily implemented methods for design, manufacture, installation, and servicing of equipment and for providing services listed in paragraph (1) of this subsection, except that recipients of loans made pursuant to this subsection shall not subsequently be eligible for such grants.

²⁹⁷Subsection 7(e) was repealed by § 107(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). For text and legislative history of former section, please see earlier edition of this Handbook. New § 7(f) added by § 12068(a)(1) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1410) and new subsection 7(f) added by § 12068(a)(2). The same language was

(1) INCREASED DEFERMENT AUTHORIZED.—

(A) IN GENERAL.—In making loans under subsection (b), the Administrator may provide, to the person receiving the loan, an option to defer repayment on the loan.

(B) PERIOD.—The period of a deferment under subparagraph (A) may not exceed 4 years.

(g)²⁹⁸ NET EARNINGS CLAUSES PROHIBITED FOR 7(b) LOANS.—In making loans under subsection (b), the Administrator shall not require the borrower to pay any non-amortized amount for the first five years after repayment begins.

(h) (1)^{299 300} The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

(ii) which complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and

(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services; or

enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2172).

²⁹⁸ Subsection 7(f) was repealed by § 107(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). For text and legislative history of former § 7(f), please see earlier edition of this Handbook. New subsection 7(g) added by § 12070 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1411). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2173). Previous § 7(g) on water pollution control loans repealed by § 1913(c) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), effective Oct. 1, 1981, per § 1918 of PL 97-35. It originally had been added by § 8(a) of PL 92-500, the Federal Water Pollution Control Act amendments of 1972, approved Oct. 18, 1972 (86 Stat. 816).

²⁹⁹ The authority for making loans contemplated by this subsection was transferred to § 7(a) by § 1902(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), and now appears as § 7(a)(10). However, the existing § 7(h) inadvertently was not repealed by PL 97-35 and therefore continues to exist until further amendment.

³⁰⁰ This section, added by § 3(b) of PL 92-595, the Small Business Investment Act Amendments of 1972, approved Oct. 27, 1972 (86 Stat. 1314), was also denominated § 7(g), apparently inadvertently. Redesignated § 7(h) by § 3(a) of PL 93-237, approved Jan. 2, 1974 (87 Stat. 1023).

§ 7(h)(1) to
§ 7(h)(2)

Handicapped
individuals.

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed \$350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 4(c)(1)(B) of this Act would exceed \$350,000. In

§ 7(h)(3) to
§ 7(i)(3)

vents to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum per annum.³⁰¹ The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: Provided, however, That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term "handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

"Handicapped individual."

(i)³⁰² (1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 2(b)³⁰³ of this Act, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: Provided, however, That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed \$100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: Provided, however, That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

Management training program.

³⁰¹Sentence amended by § 3(2) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742), to clarify the rate of interest on SBA's loans to handicapped persons. Loans made in conjunction with private lenders will bear a rate of interest set by borrowers, but SBA's share of such loan shall remain 3 per centum per annum.

³⁰²The authority for making loans contemplated by this subsection was transferred to § 7(a) by § 1902(a) of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357), and now appears as § 7(a)(11). However, the existing §.7(i) (added by § 2(a)(4) of PL 93-386, supra,) inadvertently was not repealed by PL 97-35 and therefore continues to exist until further amendment.

³⁰³

[?]Reference is to current § 2(c)(1), not § 2(b). Renumbered by § 112(a) of PL 94-305, approved June 4, 1976 (90 Stat. 663).

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(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between \$3,500 and \$100,000³⁰⁴ made under this subsection the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended, as it shall determine necessary. § 7(i)(4) to § 7(i)(7)

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 10(a) of this Act.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations— Loan limitations.

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: Provided, however, That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 (42 U.S.C. 3108 et seq.) shall not exceed the rate currently applicable to new loans made under section 201 of that Act (42 U.S.C. 3141); and [42 USC 3108]. [42 USC 3141].

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant Urban area loan allocation.

³⁰⁴ “\$100,000” substituted in lieu of “\$50,000” by § 109 of PL 94-305, approved June 4, 1976 (90 Stat. 663).

to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low-income as it applies to owners of small business concerns eligible to be assisted under this subsection.

§ 7(j)(1) to
§ 7(j)(3)

(7) No financial assistance shall be extended pursuant to this subsection if the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

Relocations,
funds,
restrictions.

(j)³⁰⁵ (1) The Administration shall provide financial assistance to public or private organizations to pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under sections 7(i), 7(j)(10), and 8(a) of this Act, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

Technical and
management
assistance.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) The furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under sections 7(i), 7(j)(10), and 8(a) of this Act;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of

Subcontract
placement with
businesses
located in
certain areas.

³⁰⁵Added by § 2(a)(4) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742), to transfer similar authority from Title IV of the Economic Opportunity Act of 1964. Substantially rewritten by § 204 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

unemployed or low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under sections 7(i), 7(j), and 8(a) of this Act.

§ 7(j)(4) to
§ 7(j)(9)

- (A) [Repealed].³⁰⁶
- (B) [Repealed].³⁰⁷

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 8(a) of this Act.

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

Grants and
contracts.

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(8) [Repealed].³⁰⁸

³⁰⁶Section 7(j)(3)(A) repealed by § 505(h) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3887). The repealed paragraph reads:

An advisory committee composed of five high-level officers from five United States businesses and five representatives of minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The Chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee.

³⁰⁷Section 7(j)(3)(B) repealed by § 242(1) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2827). Text of repealed paragraph:

The Government Accountability Office shall evaluate the activities taken by the Administration to achieve the purpose of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The Government Accountability Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph.

³⁰⁸Section 7(j)(8) repealed by § 242(2) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2827). Text of repealed paragraph:

The Government Accountability Office shall provide for an independent and continuing evaluation of programs under sections 7(i), 7(j) and 8(a) of this Act, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and

§ 7(j)(10) to § 7(j)(10)(A)(vi) (9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of sections 7(i), 7(j), and 8(a) of this Act.

(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the "Program") which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.³⁰⁹

Small business and capital ownership development program.

(A) The program shall—

(i)³¹⁰ assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which set forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in Program; and

skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General.

³⁰⁹Last sentence rewritten by § 104 of PL 96-481, approved Oct. 21, 1980 (94 Stat. 2321).

³¹⁰Subsection 7(j)(10)(A)(i) rewritten by § 205(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859), effective June 1, 1989, per § 208(b)(1)(A) of PL 100-656.

SMALL BUSINESS ACT

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958. § 7(j)(10)(B) to § 7(j)(10)(D)(i)

(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act shall participate in the Program.

(C)³¹¹ (i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 8(a) on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of— Time limitations.

(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a); or

(II) its original fixed program participation term (plus any extension thereof) assigned prior to the effective date of this paragraph plus eighteen months.

(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

(D)³¹² (i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the “plan”) as described in clause (ii) of this subparagraph for review by the Business Opportunity Business plans.

³¹¹Prior subsection 7(j)(10)(C) deleted by section 205(a)(1) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859). Section 7(j)(10)(D) added by § 203 of PL 100-656, effective June 1, 1989, per § 803 thereof and redesignated as 7(j)(10)(C) by § 205(b)(2) of PL 100-656. Deleted subsection 7(j)(10)(C), as amended by § 107 of PL 96-481, approved Oct. 21, 1980 (94 Stat. 2321), provided:

No small business concern shall receive a contract pursuant to section 8(a) of this Act unless—
(i) the business plan required pursuant to section 7(j)(10)(A)(i) is approved by the Administration; and
(ii) the program is able to provide such concern with, but not limited to, such management, technical and financial services as may be necessary to achieve the targets, objectives, and goals of such business.

³¹²New paragraph 7(j)(10)(D) added by § 205(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3859), effective June 1, 1989, per § 208 of PL 100-656.

Specialist³¹³ assigned to assist such Program Participant.³¹⁴ The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 8(a)(6). Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

(ii) The plans submitted under this subparagraph shall include the following:

(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the small business concern from receiving contracts other than those awarded under section 8(a).

(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation.

(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I)³¹⁵ and section 8(a).

³¹³Business Opportunity Specialist capitalized as per § 5(b)(1) of PL 101-37, approved June 15, 1989 (103 Stat. 71) and defined in § 3 of the same law, see p. 1043 of this Handbook.

³¹⁴ Certification requirement added by § 1622(c) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2069). The requirement was deleted by § 865(a)(2) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 928). The certification requirement is now found at § 4(g). The deleted sentence read: "The Business Opportunity Specialist shall have a Level I Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that a Business Opportunity Specialist serving at the time of the date of enactment of the National Defense Authorization Act for Fiscal Year 2013 may continue to serve as a Business Opportunity Specialist for a period of 5 years beginning on that date of enactment without such a certification."

³¹⁵Reference is to § 7(j)(10)(I). In subpar. (iii), phrase beginning "relating" added by subsection 5(b)(3) of PL 101-37, approved June 15, 1989 (103 Stat. 71).

(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a). ^{§ 7(j)(10)(D)(iv) to § 7(j)(10)(F)}

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 8(a) for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 8(a), reflecting compliance with the requirements of subparagraph (I)³¹⁶ relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a),

(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.

(E)³¹⁷ A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 8(a) shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

(ii)³¹⁸ completes the period of Program participation as prescribed by paragraph (15);

³¹⁶Phrase beginning “relating” added by subsection 5(b)(5) of PL 101-37, *supra*.

³¹⁷Subsections 7(j)(10)(E) through (H) added by § 208 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3862), effective June 1, 1989, per § 803 of PL 100-656.

³¹⁸Subsection 7(j)(10)(E)(ii) changed from “participates in the Program for a period in excess of the time limits prescribed by paragraph (15)” to current language by subsection 7(a)(1) of PL 101-37, approved June 15, 1989 (103 Stat. 72).

SMALL BUSINESS ACT

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 8(a)(9); or

§ 7(j)(10)(F)(i) to
§ 7(j)(10)(H)

(iv) is graduated pursuant to a graduation proceeding in accordance with section 8(a)(9).

(F)³¹⁹ For purposes of this section and section 8(a), the term “terminated” and the term “termination” means the total denial or suspension of assistance under this paragraph or under section 8(a) prior to the graduation of the participating small business concern or prior to the expiration of the maximum program participation term. An action for termination shall be based upon good cause, including—

“Terminated.”
“Termination.”

(i) the failure by such concern to maintain its eligibility for Program participation;

(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 8(a);

(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or

(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 16. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after

Termination proceeding.

³¹⁹First sentence of subsection 7(j)(10)(F) rewritten by subsection 7(a)(3) of PL 101-37, approved June 15, 1989 (103 Stat. 72).

making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9).

(H) For the purposes of sections 7(j) and 8(a) the term “graduated” “Graduated” or “graduation” means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 8(a).

(I)³²⁰ (i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 8(a) (hereinafter referred to as “business activity targets.”). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage [sic] a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

Business activity targets.

(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii).

(iii) The regulations referred to in clause (ii) shall:

(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 8(a), expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on the effective date of this subparagraph;³²¹

(II) require a Program Participant to attain its business activity targets;

(III) provide that, before the receipt of any contract to be awarded pursuant to section 8(a), the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

³²⁰Subsection 7(j)(10)(I) added by § 303(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3868), effective June 1, 1989, per § 803(b)(1)(B) thereof. This change failed to include the section designation (I), which was added by § 10(b) of PL 101-37, approved June 15, 1989 (103 Stat. 73).

³²¹June 1, 1989, per § 803 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3899).

(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

§ 7(j)(10)(J)(i) to § 7(j)(11)(B)(i) (V) authorize the Administration to take appropriate measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 8(a); such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 8(a); except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 8(a)(9).

(J)³²² (i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 8(a) may be suspended³²³ pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

Continued eligibility.

(ii) (I) Except as authorized by subclause (II) or (III), no award shall be made pursuant to section 8(a) to other than a small business concern.

(II)³²⁴ In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(III) Any joint venture established under the authority of section 602(b) of Public Law 100-656, the "Business Opportunity Development Reform Act of 1988," shall be eligible for award of a contract pursuant to section 8(a).

(11) (A) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal Assistance to small business concerns eligible for assistance

Eligibility of participants.

³²²Subsection 7(j)(10)(J) added by § 206 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3861).

³²³Phrase "or terminated" deleted by § 6(a) of PL 101-37, approved June 15, 1989 (103 Stat. 72).

³²⁴Subsections 7(j)(10)(J)(II) and (III) added by § 204(a) of P.L. 101-574, approved Nov. 15, 1990.

under section 7(i) of this Act and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act. § 7(j)(11)(B)(ii) to § 7(j)(11)(E)

(B)³²⁵ (i) Except as provided in clause (iii), no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 8(a)(4) shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to section 7(j)(10) and section 8(a) if—

(I) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(II) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(C) No concern, previously eligible for the award of contracts pursuant to section 8(a), shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 8(a)(4)) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a). In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

³²⁵Subsections 7(j)(11)(B) through (H) added by § 201(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3856), effective June 1, 1989, per § 803(b)(1)(A) thereof. Subsection 7(j)(11)(B) rewritten by § 4(1) of PL 101-37, approved June 15, 1989 (103 Stat. 70) and effective June 1, 1989, per § 32 of PL 101-37. The text of prior subsection 7(j)(11)(B) reprinted below:

Division of
Program
Certification
and Eligibility.

Except as provided in section 602(d) of the Business Opportunity Development Reform Act of 1988, any individual upon whom eligibility is based pursuant to section 8(a)(4), shall be permitted to assert such eligibility for only one small business concern. Notwithstanding the provisions of the preceding sentence, no individual who was determined pursuant to section 8(a) to be socially and economically disadvantaged before the effective date of this subparagraph shall be permitted to assert such disadvantage with respect to any other concern making application for certification after such effective date.

§ 7(j)(11)(F) to
 § 7(j)(11)(F)(vii) (E) There is established a Division of Program Certification and
 ty (hereinafter referred to in this paragraph as the “Division”) that shall be made part
 of the Office of Minority Small Business³²⁶ and Capital Ownership Development. The
 Division shall be headed by a Director who shall report directly to the Associate
 Administrator for Minority Small Business and Capital Ownership Development. The
 Division shall establish field offices within such regional offices of the Administration as
 may be necessary to perform efficiently its functions and responsibilities.

(F) Subject to the provisions of section 8(a)(9), the functions and Functions.
 responsibility of the Division are to—

(i) receive, review and evaluate applications for
 certification pursuant to paragraphs (4), (5), (6) and (7) of section 8(a);

(ii) advise each program applicant within 15 days after the
 receipt of an application as to whether such application is complete and suitable for
 evaluation and, if not, what matters must be rectified;

(iii) render recommendations on such applications to the
 Associate Administrator for Minority Small Business and Capital Ownership Development;

(iv) review and evaluate financial statements and other
 submissions from concerns participating in the program established by paragraph (10) to
 ascertain continued eligibility to receive subcontracts pursuant to section 8(a);

(v) make a request for the initiation of termination or
 graduation proceedings, as appropriate, to³²⁷ the Associate Administrator for Minority Small
 Business and Capital Ownership Development;

(vi)³²⁸ make recommendations to the Associate Administrator
 for Minority Small Business and Capital Ownership Development concerning protests from
 applicants that have been denied program admission;

³²⁶The phrase “Office of Minority Small Business” substituted for “Office of the Associate Administrator for Minority Small
 Business” by § 4(2) of PL 101-37, approved June 15, 1989. Section 4(3) of PL 101-37 substituted “the Associate
 Administrator for Minority Small Business and Capital Ownership Development” for “such Associate Administrator.”

³²⁷“to” substituted for “with” by § 4(4) of PL 101-37, *infra*.

³²⁸Subsection 7(j)(11)(F)(vi) rewritten by § 4(5) of PL 101-37, *supra*. Text of former subsection 7(j)(11)(F)(vi) reads: “...
 decide protests from applicants that have been denied program admission.”

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(vii)³²⁹ decide protests regarding the status of a concern a § 7(j)(11)(F)(viii) to disadvantaged concern for purposes of any program or activity conducted under the aut § 7(j)(11)(I)(iii) of subsection (d) of section 8, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

(viii) implement such policy directives as may be issued by the Associate Administrator for Minority Small Business and Capital Ownership Development pursuant to subparagraph (I) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

(H)³³⁰ Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.

Application review.

(I) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development

³²⁹Section 221 of PL 102-366, approved Sept. 4, 1992 (106 Stat. 999), provides:

- (a) A decision issued pursuant to section 7(j)(11)(F)(vii) of the Small Business Act shall—
- (1) be made available to the protestor, the protested party, the contracting officer (if not the protestor), and all other parties to the proceeding, and published in full text; and
 - (2) include findings of fact and conclusions of law, with specific reasons supporting such findings or conclusions, upon each material issue of fact and law of decisional significance regarding the disposition of the protest.
- (b) A decision issued under section 7(j)(11)(F)(vii) of the Small Business Act that is issued prior to the date of enactment of this Act shall not have value as precedent in deciding any subsequent protest until such time as the decision is published in full text.

³³⁰Subsection 7(j)(11)(H) renumbered as 7(j)(11)(I) and new subsection 7(j)(11)(H) added by section 4(9) of PL 101-37, supra.

by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

§ 7(j)(12)(A) to
§ 7(j)(13)(D)

(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

(12)³³¹ (A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental³³² stage; and a transitional stage.

Program stages.

(B) The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

Developmental stage.

(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

Transitional stage.

(13)³³³ A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12:

Assistance available.

(A) Contract support pursuant to section 8(a).

(B) Financial assistance pursuant to section 7(a)(20).

³³¹Subsection 7(j)(12) added by § 301(a) of PL 100-656, supra.

³³²In subsection 7(j)(12)(A), “developmental” substituted for “development” by § 8(a)(1) of PL 101-37, approved June 15, 1989 (103 Stat. 72). In subsection 7(j)(12)(B), “in its effort” added by § 8(a)(2) of PL 101-37, supra.

³³³Subsection 7(j)(13) added by § 301(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3865), effective October 1, 1989, per § 803(b)(3)(D) thereof.

SMALL BUSINESS ACT

(C) A maximum of two exemptions from the requirements of section 1(a) of the Act entitled “An Act providing conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes,” approved June 30, 1936 (49 Stat. 2036), which exemptions shall apply only to contracts awarded pursuant to section 8(a) and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of \$10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

§ 7(j)(13)(D)(i) to
§ 7(j)(13)(E)(i)

(D) A maximum of five exemptions from the requirements of section 3131 of title 40, United States Code, which exemptions shall apply only to contracts awarded pursuant to section 8(a), except that, such exemptions may be granted under this subparagraph only if—

Miller Act
exemptions.
[40 USC 3131].

(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iii) the contract to which it pertains does not exceed \$3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1994.³³⁴

(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns.³³⁵ Such assistance may be made without regard to section 18(a). Assistance may be made by direct payment to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term “training provider” shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under title I of the Workforce Investment Act of 1998. The Administration shall, in consultation with

Training
assistance.

³³⁴Expiration date changed from Oct. 1, 1992, to Oct. 1, 1994, by § 206 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2820).

³³⁵Second sentence of subsection 7(j)(13)(E) replaced by current second and third sentences by § 8(b) of PL 101-37, approved June 15, 1989 (103 Stat. 72). Prior text read:

Such financial assistance may be made without regard to section 18(a), shall be made by way of reimbursement to the training provider, and shall have such adjustments as may be necessary to provide for overpayments or underpayments.

SMALL BUSINESS ACT

the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

§ 7(j)(13)(E)(ii) to § 7(j)(13)(F)(ii)(I)(aa) existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

(iii) no more than \$2,500 shall be made available for any one employee or potential employee;

(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

(F) (i) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the

Transfer of technology or surplus property.

Government) during such concern's term of participation in the Program and for one year thereafter.

(ii)³³⁶ (I) In this clause—

(aa) the term “covered period” means the period beginning on the date on which the President declared the applicable major disaster; and § 7(j)(13)(F) “Covered period.” § 7(j)(13)(C)

(bb) the term “disaster area” means the area for which the President has declared a major disaster, during the covered period. “Disaster area.”

(II) The Administrator may transfer technology or surplus property under clause (i) on a priority basis to a small business concern located in a disaster area if—

(aa) the small business concern meets the requirements for such a transfer, without regard to whether the small business concern is a Program Participant; and

(bb) for a small business concern that is a Program Participant, on and after the date on which the President declared the applicable major disaster, the small business concern has not received property under this subparagraph on the basis of the status of the small business concern as a Program Participant.

(III) For any transfer of property under this clause to a small business concern, the terms and conditions shall be the same as a transfer to a Program Participant, except that the small business concern shall agree not to sell or transfer the property to any party other than the Federal Government during the covered period.

(IV) A small business concern that receives a transfer of property under this clause may not receive a transfer of property under clause (i) during the covered period.

(V) If a small business concern sells or transfer property in violation of the agreement described in subclause (III), the Administrator may initiate proceedings to prohibit the small business concern from receiving a transfer of property under this clause or clause (i), in addition to any other remedy available to the Administrator.

(iii)³³⁷ (I) In this clause, the term “covered period” means the period beginning on the date of enactment of this clause and ending on the date on which § 7(j)(13)(F) “Covered period.”

³³⁶ Subparagraph 7(j)(13)(F) reorganized and new clause (ii) added by § 2105 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 692).

³³⁷ New clause 7(j)(13)(F)(iii) added by § 861(c) of P.L. 115-232, approved August 13, 2018 (Stat.).

the Oversight Board established under section 101 of the Puerto Rico Oversight, Management, and Economic Stability Act (48 U.S.C. 2121) terminates.

(II) The Administrator may transfer technology or surplus property under clause (i) to a Puerto Rico business if the Puerto Rico business meets the requirements for such a transfer, without regard to whether the Puerto Rico business is a Participant.

§ 7(j)(13)(H) to
§ 7(j)(16)(B)

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

(H) Joint ventures, leader-follow arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

Joint ventures.

(I) Transitional management business planning training and technical assistance.

(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(14)³³⁸ Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

(15)³³⁹ Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 8(a) for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

Develop-
mental
assistance,
term.

(A) no more than four years may be spent in the developmental stage of Program Participation; and

(B) no more than five years may be spent in the transitional stage of Program Participation.

³³⁸Section 7(j)(14) added by § 301(c) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3867), effective June 1, 1989, per § 803(b)(1)(B) thereof.

³³⁹New § 7(j)(15) added by § 202 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3858).

SMALL BUSINESS ACT

(16)³⁴⁰ (A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10). Data collection.

(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following: § 7(j)(16)(B)(i) to § 7(j)(16)(B)(vii) Congress.

(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at \$50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the preceding sentence for all eligible individuals in the Program as of the effective date of this paragraph.

(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 8(a).

(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 8(a), and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and section 7(a)(20) during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

³⁴⁰Section 7(j)(16) added by § 408 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3877).

SMALL BUSINESS ACT

(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 8(a).

§ 7(j)(16)(C) to § 7(l) (vii) The total dollar value of contracts and options awarded to section 8(a), at such dollar increments as the Administrator deems appropriate, for each standard industrial classification code under which such contracts and options were classified.

(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.

(k)³⁴¹ In carrying out its functions under subsections 7(i), 7(j) and 8(a)³⁴² of this Act, the Administration is authorized—

Administration, functions.

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

Gift acceptance.

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31, United States Code; and

Accept voluntary service. [31 USC 1342].

(4) to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, United States Code, except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, United States Code,³⁴³ including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5 of such Act (5 U.S.C. 73b-2) for persons in the Government service employed intermittently, while so employed: Provided, however, that contracts for such employment may be renewed annually.

§ 7(l)(1) to § 7(l)(4)(A)

(l)³⁴⁴ SMALL BUSINESS INTERMEDIARY LENDING PILOT PROGRAM.
(1) DEFINITIONS.—In this subsection—

intermediary lending pilot program.

³⁴¹Added by § 2(a)(4) of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742), to transfer similar authority from Economic Opportunity Act of 1964.

“Eligible intermediary.”

³⁴²Reference to “8(a)” added by § 205 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

³⁴³The clause “the daily equivalent . . . United States Code” was added by § 104 of PL 95-510, approved Oct. 24, 1978 (92 Stat. 1780), effective Oct. 1, 1979.

SMALL BUSINESS ACT

(A) the term “eligible intermediary”—

(i) means a private, nonprofit entity that—

(I) seeks or has been awarded a loan from the Administrator to make loans to small business concerns under this subsection; and

(II) has not less than 1 year of experience making loans to startup, newly established, or growing small business concerns; and

(ii) includes—

(I) a private, nonprofit community development corporation;

(II) a consortium of private, nonprofit organizations or nonprofit community development corporations; and

(III) an agency of or nonprofit entity established by a Native American Tribal Government; and

(B) the term “Program” means the small business intermediary lending pilot program established under paragraph (2). “Program.”

(2) ESTABLISHMENT.—There is established a 3-year small business intermediary lending pilot program, under which the Administrator may make direct loans to eligible intermediaries, for the purpose of making loans to startup, newly established, and growing small business concerns.

(3) PURPOSES.—The purposes of the Program are—

(A) to assist small business concerns in areas suffering from a lack of credit due to poor economic conditions or changes in the financial market; and

(B) to establish a loan program under which the Administrator may provide loans to eligible intermediaries to enable the eligible intermediaries to provide loans

³⁴⁴Previous subsection 7(l) was repealed by § 107(d) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). For text and legislative history of former subsection 7(l), please see previous edition of this Handbook. New subsection 7(l) added by § 1131(a) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2512). Sections 1131(b) and (c) of P.L. 111-240 provide:

(b) RULEMAKING AUTHORITY.—Not later than 180 days after the date of enactment of this Act, the Administrator shall issue regulations to carry out section 7(l) of the Small Business Act, as amended by subsection (a).

(c) AVAILABILITY OF FUNDS.—Any amounts provided to the Administrator for the purposes of carrying out section 7(l) of the Small Business Act, as amended by subsection (a) shall remain available until expended.

to startup, newly established, and growing small business concerns for working capital, real estate, or the acquisition of materials, supplies, or equipment.

(4) LOANS TO ELIGIBLE INTERMEDIARIES.—

§ 7(1)(4)(A)(i) to
§ 7(1)(5)

(A) APPLICATION.—Each eligible intermediary desiring a loan under this subsection shall submit an application to the Administrator that describes—

- (i) the type of small business concerns to be assisted;
- (ii) the size and range of loans to be made;
- (iii) the interest rate and terms of loans to be made;
- (iv) the geographic area to be served and the economic, poverty, and unemployment characteristics of the area;
- (v) the status of small business concerns in the area to be served and an analysis of the availability of credit; and
- (vi) the qualifications of the applicant to carry out this subsection.

(B) LOAN LIMITS.—No loan may be made to an eligible intermediary under this subsection if the total amount outstanding and committed to the eligible intermediary by the Administrator would, as a result of such loan, exceed \$1,000,000 during the participation of the eligible intermediary in the Program.

(C) LOAN DURATION.—Loans made by the Administrator under this subsection shall be for a term of 20 years.

(D) APPLICABLE INTEREST RATES.—Loans made by the Administrator to an eligible intermediary under the Program shall bear an annual interest rate equal to 1.00 percent.

(E) FEES; COLLATERAL.—The Administrator may not charge any fees or require collateral with respect to any loan made to an eligible intermediary under this subsection.

(F) DELAYED PAYMENTS.—The Administrator shall not require the repayment of principal or interest on a loan made to an eligible intermediary under the Program during the 2-year period beginning on the date of the initial disbursement of funds under that loan.

(G) MAXIMUM PARTICIPANTS AND AMOUNTS.—During each of fiscal years 2011, 2012, and 2013, the Administrator may make loans under the Program—

(i) to not more than 20 eligible intermediaries; and

§ 7(l)(5)(A) to § 7(m)(1)(A)(ii)

(ii) in a total amount of not more than \$20,000,000.

(5) LOANS TO SMALL BUSINESS CONCERNS.—

(A) IN GENERAL.—The Administrator, through an eligible intermediary, shall make loans to startup, newly established, and growing small business concerns for working capital, real estate, and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) MAXIMUM LOAN.—An eligible intermediary may not make a loan under this subsection of more than \$200,000 to any 1 small business concern.

(C) APPLICABLE INTEREST RATES.—A loan made by an eligible intermediary to a small business concern under this subsection, may have a fixed or a variable interest rate, and shall bear an interest rate specified by the eligible intermediary in the application of the eligible intermediary for a loan under this subsection.

(D) REVIEW RESTRICTIONS.—The Administrator may not review individual loans made by an eligible intermediary to a small business concern before approval of the loan by the eligible intermediary.

(6) TERMINATION.—The authority of the Administrator to make loans under the Program shall terminate 3 years after the date of enactment of the Small Business Job Creation and Access to Capital Act of 2010 [P.L. 111-240].

(m)³⁴⁵ MICROLOAN PROGRAM

Microloan program.
15 USC 636(m).

(1) (A) PURPOSES. The purposes of the Microloan Program are—

(i)³⁴⁶ to assist women, low-income, veteran (within the meaning of such term under section 3(q)),³⁴⁷ and minority entrepreneurs and business owners,

³⁴⁵Section 7(m) added by § 609(h) of PL 102-140, approved Oct. 28, 1991 (105 Stat. 827). Section 609(i) of PL 102-140 provides: “Not later than 90 days after the date of the enactment of this Act, the Small Business Administration shall promulgate interim final regulations to implement the microloan demonstration program.” Section 203 of PL 103-403, approved Oct. 22, 1994 (108 Stat. 4181) provides: “The demonstration program established by subsection (h) shall terminate on October 1, 1997.” Section 201(c)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598), removed the word “Demonstration” throughout this subsection.

³⁴⁶Paragraph 7(m)(1)(A)(i) rewritten slightly by § 113(a)(1)(A) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 989). Section 114 of PL 102-366 provides that “[N]ot later than 45 days after the date of enactment of this Act, the Small Business Administration shall promulgate interim final regulations to implement the amendments made by this subtitle.”

³⁴⁷ The reference to veterans was added by § 403 of P.L. 106-50, approved August 17, 1999 (113 Stat. 246).

SMALL BUSINESS ACT

and other such individuals possessing the capability to operate successful business concerns;
and

§ 7(m)(1)(A)(iii) to

§ 7(m)(1)(A)(iv)(II)

(ii) to assist small business concerns in those areas
suffering from a lack of credit due to economic downturns;

(iii)³⁴⁸ to establish a microloan program to be administered by
the Small Business Administration--

(I) to make loans to eligible intermediaries to
enable such intermediaries to provide small-scale loans, particularly loans in amounts
averaging not more than \$10,000,³⁴⁹ to startup, newly established, or growing small business
concerns for working capital or the acquisition of materials, supplies, or equipment;

(II) to make grants to eligible intermediaries that,
together with non-Federal matching funds, will enable such intermediaries to provide
intensive marketing, management, and technical assistance to microloan borrowers;

(III) to make grants to eligible nonprofit entities that,
together with non-Federal matching funds, will enable such entities to provide intensive
marketing, management, and technical assistance to assist low-income entrepreneurs and
other low-income individuals obtain private sector financing for their businesses, with or
without loan guarantees; and

(IV) to report to the Committees on Small Business
of the Senate and the House of Representatives on the effectiveness of the microloan
program and the advisability and feasibility of implementing such a program nationwide; and

(iv)³⁵⁰ to establish a welfare-to-work microloan initiative,
which shall be administered by the Administration, in order to test the feasibility of
supplementing the technical assistance grants provided under clauses (ii) and (iii) of
subparagraph (B) to individuals who are receiving assistance under the State program funded
under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any
comparable State funded means tested program of assistance for low-income individuals, in
order to adequately assist those individuals in—

Welfare-to-
work
initiative.

³⁴⁸ Section 862(d) of P.L. 115-232, approved August 13, 2018 (Stat.), provides

(d) SMALL BUSINESS MICROLOAN PROGRAM OUTREACH.—The Administrator shall provide outreach and educational materials to intermediaries under section 7(m) of the Small Business Act (15 U.S.C. 636(m)) to increase the use of funds to make loans to employee-owned business concerns, including transitions to employee-owned business concerns.

³⁴⁹The clause within the commas added by § 113(a)(1)(B) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 989). The amount was changed from \$7,500 by § 210(a)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

³⁵⁰New clause 7(m)(1)(A)(iv) added by § 202(a)(1)(C) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598).

SMALL BUSINESS ACT

- (I) establishing small businesses; and § 7(m)(1)(B) to § 7(m)(3)(A)(i)(II)
- (II) eliminating their dependence on that assistance.

(B) ESTABLISHMENT. There is established a microloan program, under which the Administration may—

(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns under paragraph (6);

(ii) in conjunction with such loans and subject to the requirements of paragraph (4), make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

(iii) subject to the requirements of paragraph (5), make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed \$50,000³⁵¹ from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

(2) ELIGIBILITY FOR PARTICIPATION.—An intermediary shall be eligible to receive loans and grants under subparagraphs (B)(i) and (B)(ii) of paragraph (1) if it— Eligibility.

(A) meets the definition in paragraph (10); and

(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.

(3) LOANS TO INTERMEDIARIES.—

Loans to intermediaries.

(A) INTERMEDIARY APPLICATIONS.

(i) IN GENERAL.—As part of its application for a loan, each intermediary shall submit a description to the Administration of—

- (I) the type of businesses to be assisted;

³⁵¹Amount changed from \$15,000 by § 8(1) of P.L. 103-81, approved August 13, 1993 (107 Stat. 782). Amount changed again from \$25,000 by § 210(a)(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Amount changed again from \$35,000 by § 1113(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

SMALL BUSINESS ACT

§ 7(m)(3)(A)(i)(III) to
§ 7(m)(3)(B)(ii)(I)

- (II) the size and range of loans to be made;
- (III) the geographic area to be served and its economic, poverty, and unemployment characteristics;
- (IV) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;
- (V) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;
- (VI) the local economic credit markets, including the costs associated with obtaining credit locally;
- (VII) the qualifications of the applicant to carry out the purpose of this subsection; and
- (VIII)³⁵² any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected small business concerns.

(ii)³⁵³ **SELECTION OF INTERMEDIARIES.**—In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans in amounts averaging not more than \$10,000.

(B) **INTERMEDIARY CONTRIBUTION.**—

(i)³⁵⁴ **IN GENERAL.**—Subject to clause (ii), as a condition of any loan made to an intermediary under subparagraph (B)(i) of paragraph (1), the Administrator shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

(ii) **WAIVER OF NON-FEDERAL SHARE.**—

(I) **IN GENERAL.**—Upon request by an intermediary, and in accordance with this clause, the Administrator may waive, in whole or

³⁵²Subclause rewritten to include references to SCORE and small business development centers by § 113(a)(2)(D) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 990).

³⁵³This subparagraph added by § 113(a)(2)(E) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 990). The amount was changed from \$7,500 by § 210(a)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

³⁵⁴ Subparagraph 7(m)(3)(B) rewritten to add new clause (ii) by § 1401(a) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2547). In addition, section 1401(a)(1) (B) changed “Administration” to “Administrator” in clause (i).

§ 7(m)(3)(B)(ii)(II) to
§ 7(m)(3)(C)

in part, the requirement to obtain non-Federal funds under clause (i) for a fiscal year. Administrator may waive the requirement to obtain non-Federal funds under this clause for successive fiscal years.

(II) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this clause, the Administrator shall consider—

(aa) the economic conditions affecting the intermediary;

(bb) the impact a waiver under this clause would have on the credibility of the microloan program under this subsection;

(cc) the demonstrated ability of the intermediary to raise non-Federal funds; and

(dd) the performance of the intermediary.

(III) LIMITATIONS.—

(aa) IN GENERAL.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause if granting the waiver would undermine the credibility of the microloan program under this subsection.

(bb) SUNSET.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause for fiscal year 2013 or any fiscal year thereafter.

Sunset.

(C) LOAN LIMITS.—Notwithstanding subsection (a)(3), no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this Act would, as a result of such loan, exceed \$750,000 in the first year of

Loan limits.

SMALL BUSINESS ACT

§ 7(m)(3)(D)(i) to
§ 7(m)(3)(D)(ii)(IV)(aa)

such intermediary's participation in the program, and \$6,000,000³⁵⁵ in the remaining years of the intermediary's participation in the program.

(D)³⁵⁶ (i) IN GENERAL.—The Administrator shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid.

Loan loss
reserve fund.

(ii) LEVEL OF LOAN LOSS RESERVE FUND.—

(I) IN GENERAL.—Subject to subclause (III), the Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

(II) REVIEW OF LOAN LOSS RESERVE.—After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary in operation under this subsection

³⁵⁵Amount changed from \$2,500,000 by § 201(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2597). Amount changed from \$1,250,000 to \$2,500,000 by § 206 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181). Amount changed from \$3,500,000 to \$5,000,000 by § 1113(2)(A) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508). Amount changed from \$5,000,000 to \$6,000,000 by § 853(b) of P.L. 115-232, approved August 13, 2018 (Stat.). Section 853(c) of P.L. 115-232 provides:

(c) SBA STUDY OF MICROENTERPRISE PARTICIPATION.—Not later than one year after the date of the enactment of this section, the Administrator of the Small Business Administration shall conduct a study and submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on—

- (1) the operations (including services provided, structure, size, and area of operation) of a representative sample of—
 - (A) intermediaries that are eligible to participate in the microloan program and that do participate; and
 - (B) intermediaries that are eligible to participate in the microloan program and that do not participate;
- (2) the reasons why eligible intermediaries described in paragraph (1)(B) choose not to participate in the microloan program;
- (3) recommendations on how to encourage increased participation in the microloan program by eligible intermediaries described in paragraph (1)(B); and
- (4) recommendations on how to decrease the costs associated with participation in the microloan program for eligible intermediaries

³⁵⁶Subparagraph 7(m)(3)(D) rewritten by § 3 of P.L. 106-22, approved April 27, 1999 (113 Stat. 36). Text of former subparagraph 7(m)(3)(D) is reprinted below:

LOAN LOSS RESERVE FUND. The Administration shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid. The Administration shall require the loan loss reserve fund to be maintained--

- (i) during the initial 5 years of the intermediary's participation in the program under this subsection, at a level equal to not more than 15 percent of the outstanding balance of the notes receivable owed to the intermediary; and
- (ii) in each year of participation thereafter, at a level equal to not more than the greater of—
 - (I) 2 times an amount reflecting the total losses of the intermediary as a result of participation in the program under this subsection, as determined by the Administrator on a case-by-case basis; or
 - (II) 10 percent of the outstanding balance of the notes receivable owed to the intermediary.

prior to October 1, 1994, that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

(III) REDUCTION OF LOAN LOSS RESERVE.—

Subject to the requirements of clause IV, the Administrator may reduce the annual loan loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary.

(IV) REQUIREMENTS.—The Administrator may

reduce the annual loan loss reserve requirement of an intermediary only if the intermediary demonstrates to the satisfaction of the Administrator that— § 7(m)(3)(D)(ii)(IV)(bb) to § 7(m)(3)(F)(v)(I)

(aa) the average annual loss rate for the intermediary during the preceding 5-year period is less than 15 percent; and

(bb) that no other factors exist that may impair the ability of the intermediary to repay all obligations owed to the Administration under this subsection.

(E) UNAVAILABILITY OF COMPARABLE CREDIT.—An

intermediary may make a loan under this subsection of more than \$20,000³⁵⁷ to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than \$50,000,³⁵⁸ or have outstanding or committed to any 1 borrower more than \$35,000.

(F)³⁵⁹ LOAN DURATION; INTEREST RATES.—

(i) LOAN DURATION.—Loans made by the Administration under this subsection shall be for a term of 10 years. Loan duration.

(ii) APPLICABLE INTEREST RATES.—Except as provided in clause (iii), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent. Interest rates.

(iii) RATES APPLICABLE TO CERTAIN SMALL LOANS.—Loans made by the Administration to an intermediary that makes loans to small

³⁵⁷ Amount changed from \$15,000 by § 210(a)(3) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

³⁵⁸ Amount changed from \$25,000 by § 210(a)(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Amount changed from \$35,000 to \$50,000 by § 1113(2)(B) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

³⁵⁹This paragraph was rewritten, adding subparagraphs (ii) through (vii) by § 113(a)(3) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 990).

business concerns and entrepreneurs averaging not more than \$7,500, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

(iv) RATES APPLICABLE TO MULTIPLE SITES OR OFFICES.—The interest rate prescribed in clause (ii) or (iii) shall apply to each separate loanmaking site or office of 1 intermediary only if such site or office meets the requirements of that clause.

§ 7(m)(3)(F)(v)(II) to § 7(m)(4)(B) shall—

(v) RATE BASIS.—The applicable rate of interest under

(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administration prior to the end of such year; and

(II) be based in the second and subsequent years of an intermediary's participation in the program, based upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

(vii)[sic] COVERED INTERMEDIARIES.—The interest rates prescribed in this subparagraph shall apply to all loans made to intermediaries under this subsection on or after October 28, 1991.

(G) DELAYED PAYMENTS.—The Administration shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

(H) FEES; COLLATERAL.—Except as provided in subparagraphs (B) and (D), the Administration shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

Fees.

(4)³⁶⁰ MARKETING, MANAGEMENT AND TECHNICAL ASSISTANCE GRANTS TO INTERMEDIARIES.—Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

Grants to intermediaries.

(A) GRANT AMOUNTS.—Except as otherwise provided in subparagraph (C) and subject to³⁶¹ subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.³⁶² Except as provided in subparagraph (C), each

³⁶⁰The changes made to this paragraph by PL 102-366 are to be effective on October 1, 1992, per § 113(b) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 993).

³⁶¹First sentence was amended to include the reference to subparagraph (C) by § 113(a)(4)(A) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 991).

intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection. § 7(m)(4)(B)(i) to
§ 7(m)(4)(B)(ii)(III)(bb)

(B)³⁶³ CONTRIBUTION.—

(i) IN GENERAL.—Subject to clause (ii), as a condition of a grant made under subparagraph (A), the Administrator shall require the intermediary to contribute an amount equal to 25 percent³⁶⁴ of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

(ii) WAIVER OF NON-FEDERAL SHARE.—

(I) IN GENERAL.—Upon request by an intermediary, and in accordance with this clause, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under clause (i) for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this clause for successive fiscal years.

(II) CONSIDERATIONS.—In determining whether to waive the requirement to obtain non-Federal funds under this clause, the Administrator shall consider—

(aa) the economic conditions affecting the intermediary;

(bb) the impact a waiver under this clause would have on the credibility of the microloan program under this subsection;

(cc) the demonstrated ability of the intermediary to raise non-Federal funds; and

(dd) the performance of the intermediary.

³⁶²The last two sentences of subparagraph (A) were deleted and a new sentence added by § 113(a)(4)(B) of PL 102-366. The text of the deleted sentences follows:

In the first and second years of an intermediary's program participation, each intermediary meeting the requirement of subparagraph (B) may receive a grant of not more than 20 percent of the total outstanding balance of loans made to it under this subsection. In the third and subsequent years of an intermediary's program participation, each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 10 percent of the total outstanding balance of loans made to it under this subsection.

³⁶³ Subparagraph 7(m)(4)(B) was rewritten to add clause (ii) by § 1401(a)(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2548). The following language was deleted from the beginning what is now clause (i): “As a condition of any grant made under subparagraph (A), except for a grant made to an intermediary that provides not less than 50 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area, the Administration shall require”.

³⁶⁴Amount changed from one-half to 25 percent by § 113(4)(C) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 991).

(III) LIMITATIONS.—

(aa) IN GENERAL.—The Administrator may not waive the requirement to obtain non-Federal funds under this clause if granting the waiver would undermine the credibility of the microloan program under this subsection.

§ 7(m)(4)(C) to
§ 7(m)(4)(E)(i)

(bb) SUNSET.—The Administrator may not require the requirement to obtain non-Federal funds under this clause for fiscal year 2013 or any fiscal year thereafter.

Sunset.

(C)³⁶⁵ ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

Grants.

(i)³⁶⁶ IN GENERAL.—In addition to grants made under subparagraph (A), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area; or [Note: this subclause has expired. See fn. 320.]

(II) the intermediary has a portfolio of loans made under this subsection that averages not more than \$10,000³⁶⁷ during the period of the intermediary's participation.

(ii) PURPOSES.—A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

(iii) CONTRIBUTION EXCEPTION.—The contribution requirements in subparagraph (B) do not apply to grants made under this subparagraph.

³⁶⁵Subparagraphs (C) and (D) added by § 113(a)(4)(D) of PL 102-366.

³⁶⁶Clause 7(m)(4)(C)(i) rewritten by § 208(a)(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4182). For a definition of “economically distressed area,” see § 7(m)(11)(D). Section 208(c) of P.L. 103-403 provides “[t]he amendments made by this section shall remain in effect during the period beginning on the date of enactment of this Act and ending on October 1, 1997.” Text of former clause 7(m)(4)(C)(i) is reprinted below:

Each intermediary that meets the requirements of subparagraph (C) and that has a portfolio of loans made under this subsection that averages not more than \$7,500 during the period of the intermediary's participation in the program shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection, in addition to grants made under subparagraph (A).

³⁶⁷ Amount changed from \$7,500 by § 210(a)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

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(D) ELIGIBILITY FOR MULTIPLE SITES OR OFFICES.—The Eligibility for multiple sites. eligibility for a grant described in subparagraph (A) or (C) shall be determined separately for each loan-making site or office of 1 intermediary.

(E)³⁶⁸ ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.— § 7(m)(4)(E)(ii) to § 7(m)(4)(F)(iii)(II)

(i) IN GENERAL.—Each intermediary may expend an amount not to exceed 25³⁶⁹ percent of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection.

(ii) TECHNICAL ASSISTANCE.—An intermediary may expend not more than 25 percent of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

(F)³⁷⁰ SUPPLEMENTAL GRANT—

(i) IN GENERAL.—The Administration may accept any funds transferred to the Administration from other departments or agencies of the Federal Government to make grants in accordance with this subparagraph and section 202(b) of the Small Business Reauthorization Act of 1997 to participating intermediaries and technical assistance providers under paragraph (5), for use in accordance with clause (iii) to provide additional technical assistance and related services to recipients of assistance under a State program described in paragraph (1)(A)(iv) at the time they initially apply for assistance under this subparagraph.

(ii) ELIGIBLE RECIPIENTS; GRANT AMOUNTS.—In making grants under this subparagraph, the Administration may select, from among participating intermediaries and technical assistance providers described in clause (i), not

³⁶⁸Subparagraph 7(m)(4)(E) added by § 207 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181).

³⁶⁹Percentage amount changed from 15 by § 201(d)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598). Section 201(d)(1)(C) of the same Public Law added new clause (ii).

³⁷⁰ New subparagraph 7(m)(4)(F) was added by § 202(a)(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2599). Section 202(b) of P.L. 105-135 provides:

TRANSFER OF FUNDS—

(1) IN GENERAL - No funds are authorized to be appropriated or otherwise provided to carry out the grant program under section 7(m)(4)(F) of the Small Business Act (15 U.S.C. 636(m)(4)(F)) (as added by this section), except by transfer from another department or agency of the Federal Government to the Administration in accordance with this subsection.

(2) LIMITATION ON AMOUNTS - The total amount transferred to the Administration from other departments and agencies of the Federal Government to carry out the grant program under section 7(m)(4)(F) of the Small Business Act (15 U.S.C. 636(m)(4)(F))(as added by this section) shall not exceed—

- (A) \$3,000,000 for fiscal year 1998;
- (B) \$4,000,000 for fiscal year 1999; and
- (C) \$5,000,000 for fiscal year 2000.

more than 20 grantees in fiscal year 1998, not more than 25 grantees in fiscal year 1999, and not more than 30 grantees in fiscal year 2000, each of whom may receive a grant under this subparagraph in an amount not to exceed \$200,000 per year.

(iii) USE OF GRANT AMOUNTS.—Grants under this subparagraph—

§ 7(m)(4)(F)(iii)(II)(aa) to § 7(m)(5)(B) (I) are in addition to other grants provided under and shall not require the contribution of matching amounts as a condition of

(II) may be used by a grantee—
(aa) to pay or reimburse a portion of child care and transportation costs of recipients of assistance described in clause (i), to the extent such costs are not otherwise paid by State block grants under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9958 et seq.); and

(bb) for marketing, management, and technical assistance to recipients of assistance described in clause (i).

(iv) MEMORANDUM OF UNDERSTANDING.—Prior to accepting any transfer of funds under clause (i) from a department or agency of the Federal Government, the Administration shall enter into a Memorandum of Understanding with the department or agency, which shall—

(I) specify the terms and conditions of the grants under this subparagraph; and

(II) provide for appropriate monitoring of expenditures by each grantee under this subparagraph and each recipient of assistance described in clause (i) who receives assistance from a grantee under this subparagraph, in order to ensure compliance with this subparagraph by those grantees and recipients of assistance.

(5) PRIVATE SECTOR BORROWING TECHNICAL ASSISTANCE GRANTS. Grants made in accordance with subparagraph (B)(iii) of paragraph (1) shall be subject to the following requirements: Grants.

(A) GRANT AMOUNTS. Subject to the requirements of subparagraph (B),³⁷¹ the Administration may make not more than 55³⁷² grants annually, each

³⁷¹ Phrase “in each of the 5 years of the demonstration program established under this subsection” by § 201(d)(2)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598). Section 201(2)(2)(B) of the same Public Law deleted the phrase “for terms of up to 5 years” and replaced it with “annually.”

³⁷²The number of grants allowed was changed from 2 to 6 by § 113(a)(5) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 991). The change is to be effective on Oct. 1, 1992, per § 113(b) of PL 102-366. The number of grants was changed again to 25 and the term of 5 years was added by § 8(2) of P.L. 103-81, approved August 13, 1993 (107 Stat. 782). The number of grants was

in amounts not to exceed \$200,000 for the purposes specified in subparagraph (B)(iii) of paragraph (1).

(B) CONTRIBUTION. As a condition of any grant made under subparagraph (A), the Administration shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs. § 7(m)(6) to § 7(m)(7)

(6) LOANS TO SMALL BUSINESS CONCERNS FROM ELIGIBLE INTERMEDIARIES.— Loans from intermediaries.

(A) IN GENERAL.—An eligible intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(B) PORTFOLIO REQUIREMENT.—To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than \$15,000.³⁷³

(C) INTEREST LIMIT.—Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall³⁷⁴ not exceed the rate of interest applicable to a loan made to an intermediary by the Administration— Interest limit.

(i) in the case of a loan of more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than \$7,500 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

(D) REVIEW RESTRICTION.—The Administration shall not review individual microloans made by intermediaries prior to approval.

changed again to 55 and the amount was changed from \$125,000 to \$200,000 by § 210(a)(4) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

³⁷³ Amount changed from \$10,000 to \$15,000 by § 210(a)(5) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

³⁷⁴ Interest limit was rewritten by § 113(a)(6) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 991), which added paragraphs 7(m)(6)(C)(i) and (ii). Formerly, the interest limit was “not more than 4 percentage points above the prime lending rate, as identified by the Administration and published in the Federal Register on a quarterly basis.”

(E)³⁷⁵ ESTABLISHMENT OF CHILD CARE OR

TRANSPORTATION BUSINESS.—In addition to other eligible small businesses concerns

child borrowers under any program under this subsection may include individuals who will
§ 7(m)(7)(A) to proceeds to establish for-profit or nonprofit child care establishments or business
§ 7(m)(7)(B)(i)(I)(bb) for-profit transportation services.

(7) PROGRAM FUNDING FOR MICROLOANS³⁷⁶.—

Program
funding.

(A)³⁷⁷ NUMBER OF PARTICIPANTS.—Under the program
authorized by this subsection, the Administration may fund, on a competitive basis, not more
than 300 intermediaries.

(B)³⁷⁸ ALLOCATION.—

(i) MINIMUM ALLOCATION.— Subject to the
availability of appropriations, of the total amount of new loan funds made available for

³⁷⁵ New subparagraph 7(m)(6)(E) added by § 202(a)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

³⁷⁶ Paragraph 7(m)(7) rewritten by § 204 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181). Text of former § 7(m)(7) is reprinted below:

(A) FIRST YEAR PROGRAMS. In the first year of the demonstration program, the Administration is authorized to fund, on a competitive basis, not more than 60 microloan programs, including not less than 1 program to be located in each of the following States: Arkansas, Illinois, Iowa, Kentucky, Maine, Minnesota, New Hampshire, New York, North Carolina, Pennsylvania, South Carolina, and Wisconsin. If, at the end of fiscal year 1992, the Administration has funded less than 50 microloan programs under this subparagraph, the Administration may, in fiscal year 1993, fund a number of additional microloan programs equal to the difference between 50 and the number of microloan programs actually funded in fiscal year 1992.

(B) EXPANDED PROGRAMS. In addition to any microloan programs authorized to be funded in fiscal year 1993 in accordance with subparagraph (A), in the second year of the demonstration program, the Administration is authorized to fund up to 50 additional microloan programs.

(C) STATE LIMITATIONS. In no case shall a State—

- (i) be awarded more than 4 microloan programs in the first 2 years of the demonstration program nor more than 2 microloan programs in any year thereafter;
- (ii) receive more than \$1,500,000 to fund such programs in such State's first year of participation; or
- (iii) receive more than \$2,500,000 to fund such programs in any succeeding year of such State's participation.

³⁷⁷ Paragraph 7(m)(7)(A) was rewritten by § 210(a)(6) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Text of former paragraph 7(m)(7)(A) is reprinted below:

NUMBER OF PARTICIPANTS.--During the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 200 microloan programs.

³⁷⁸ Subparagraph 7(m)(7)(B) was rewritten by § 2(1) of P.L. 106-22, approved April 27, 1999 (113 Stat. 39). Text of former subparagraph 7(m)(7)(B) is reprinted below:

STATE LIMITATIONS.--During any fiscal year, a State shall not receive new loan funds from the Administration that exceed 125 percent of the State's pro rata share of the microloan program authorization during such fiscal year, such share to be based on the population of the State, as compared to the total population of the United States. If, however, at the beginning of the fourth quarter of a fiscal year the Administration determines that a portion of appropriated microloan funds are unlikely to be awarded during that year, the Administration may make additional funds available to a State in excess of 125 percent of the pro rata share of that State.

award under this subsection in each fiscal year, the Administration shall make available for award in each State (including the district of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) an amount equal to the sum of—

(I) the lesser of—

(aa) \$800,000; or § 7(m)(7)(B)(i)(II) to § 7(m)(9)(B)

(bb) 1/55 of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

(II) any additional amount, as determined by the Administration.

(ii) REDISTRIBUTION.—If, at the beginning of the third quarter of a fiscal year, the Administration determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under clause (i) during that fiscal year, the Administration may make that portion available for award in any one or more States (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) without regard to clause (i).

(8)³⁷⁹ EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving microloan program applicants and providing funding to intermediaries³⁸⁰ under this subsection, the Administration shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

Equitable distribution of intermediaries.

(9)³⁸¹ GRANTS FOR MANAGEMENT, MARKETING, TECHNICAL ASSISTANCE, AND RELATED SERVICES—

Grants for technical assistance.

(A) IN GENERAL.—The Administration may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practice necessary to operate successful microloan programs.

³⁷⁹Section 7(m)(8) rewritten by § 205 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4181). Former text of § 7(m)(8) is reprinted below:

RURAL ASSISTANCE. In funding microloan programs, the Administration shall ensure that at least one-half of the programs funded under this subsection will provide microloans to small business concerns located in rural areas.

³⁸⁰Phrases “and providing funding to intermediaries” and “and provide funding” were added by § 2(2) of P.L. 106-22, approved April 27, 1999 (113 Stat. 39).

³⁸¹New paragraph (9) added by § 113(a)(9) of PL 102-366 and former paragraphs (9) and (10) redesignated as (10) and (11) by § 113(a)(8) of PL 102-366. Paragraph heading changed by § 202(a)(4)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

§ 7(m)(9)(C) to
§ 7(m)(11)(A)(i)

(B) ASSISTANCE AMOUNT.—The Administration shall transfer t of its annual appropriation for loans and loan guarantees³⁸³ under this subsection inistration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing³⁸⁴ to achieve the purpose set forth in subparagraph (A).

(C)³⁸⁵ WELFARE-TO-WORK.—Of amounts made available to carry out the welfare-to-work microloan initiative under paragraph (1)(A)(iv) in any fiscal year, the Administration may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-work microloan initiative grantees, to ensure that, as grantees they have the knowledge, skills, and understanding of microlending and welfare-to-work transition, and other related issues, to operate a successful welfare-to-work microloan initiative.

Welfare-to-work.

(10) REPORT TO CONGRESS. On November 1, 1995, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report, including the Administration's evaluation of the effectiveness of the first 3 1/2 years of the microloan program and the following:

Report to Congress.

(A) the numbers and locations of the intermediaries funded to conduct microloan programs;

(B) the amounts of each loan and each grant to intermediaries;

(C) a description of the matching contributions of each intermediary;

(D) the numbers and amounts of microloans made by the intermediaries to small business concern borrowers;

(E) the repayment history of each intermediary;

(F) a description of the loan portfolio of each intermediary including the extent to which it provides microloans to small business concerns in rural areas; and

³⁸²Amount changed from 3 percent by § 8(3) of P.L. 103-81, approved August 13, 1993 (107 Stat. 782).

³⁸³Reference to loan guarantees added by § 604(1) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4203).

³⁸⁴Reference to national and regional nonprofit organizations added by § 604(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4203).

³⁸⁵ New subparagraph 7(m)(9)(C) added by § 202(a)(4)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

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(G) any recommendations for legislative changes that would improve program operations.

(11) DEFINITIONS. For purposes of this subsection—

§ 7(m)(11)(A)(ii) to
§ 7(m)(11)(C)(ii)

(A) the term “intermediary” means

(i) a private, nonprofit entity;
(ii) a private³⁸⁶ nonprofit community development corporation;

(iii)³⁸⁷ a consortium of private, nonprofit organizations or nonprofit community development corporations;

(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if--

(I) no application is received from an eligible nonprofit organization; or

(II) the Administration determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or

(v)³⁸⁸ an agency of or nonprofit entity established by a Native American Tribal Government,

that seeks to borrow or has borrowed funds from the Small Business Administration to make microloans to small business concerns under this subsection;

(B) the term “microloan” means a short-term, fixed rate loan of not more than \$50,000,³⁸⁹ made by an intermediary to a startup, newly established, or growing small business concern; “Microloan.”

(C) the term “rural area” means any political subdivision or unincorporated area-- “Rural area.”

³⁸⁶The term “private” was added by § 307(c) of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4264).

³⁸⁷Subsection 7(m)(11)(A) was rewritten, including addition of subparagraphs (iii) and (iv), by § 113(a)(10)(A) of PL 102-366, approved Sept. 4, 1992 (106 Stat. 992).

³⁸⁸Clause 7(m)(11)(A)(v) added by § 202 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4180).

³⁸⁹ Amount changed from \$25,000 by § 210(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Amount changed from \$35,000 to \$50,000 by § 1113(3) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2508).

§ 7(m)(11)(D) to
§ 7(n)(1) Secretary of Agriculture) or its equivalent thereof; or

(ii) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Small Business Administration has determined such political subdivision or area to be rural; and

(D)³⁹⁰ the term “economically distressed area,” as used in paragraph (4), means a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level. “Economically distressed area.”

(12)³⁹¹ DEFERRED PARTICIPATION LOAN PILOT.—In lieu of making direct loans to intermediaries as authorized in paragraph (1)(B), during fiscal years 1998 through 2000, the Administration may, on a pilot program basis, participate on a deferred basis of not less than 90 percent and not more than 100 percent on loans made to intermediaries by a for-profit or nonprofit entity or by alliances of such entities, subject to the following conditions: Deferred participation loan pilot.

(A) NUMBER OF LOANS.—In carrying out this paragraph, the Administration shall not participate in providing financing on a deferred basis to more than 10 intermediaries in urban areas or more than 10 intermediaries in rural areas.

(B) TERM OF LOANS.—The term of each loan shall be 10 years. During the first year of the loan, the intermediary shall not be required to repay any interest or principal. During the second through fifth years of the loan, the intermediary shall be required to pay interest only. During the sixth through tenth years of the loan, the intermediary shall be required to make interest payments and fully amortize the principal.

(C) INTEREST RATE.—The interest rate on each loan shall be the rate specified by paragraph (3)(F) for direct loans.

(13)³⁹² EVALUATION OF WELFARE-TO-WORK MICROLOAN INITIATIVE.—On January 31, 1999, and annually thereafter, the Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on any monies distributed pursuant to paragraph (4)(F). Evaluation; report to Congress.

(n)³⁹³ REPAYMENT DEFERRED FOR ACTIVE DUTY RESERVISTS.—

³⁹⁰Subparagraph 7(m)(11)(D) added by § 208(b)(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4182). Subsection 208(c) provides that “[t]he amendments made by this section shall remain in effect during the period beginning on the date of enactment of this Act and ending on October 1, 1997.”

³⁹¹Paragraph 7(m)(12) added by § 201 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4180). Subsection 201(c)(4) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2598), deleted “during fiscal years 1995 through 1997” and inserted “during fiscal years 1998 through 2000”.

³⁹²Paragraph 7(m)(13) added by § 202(a)(5) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

³⁹³New subsection 7(n) added by § 402(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 244).

(1) DEFINITIONS.—In this subsection:

(A) ELIGIBLE RESERVIST.—The term “eligible reservist” means a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict. “Eligible reservist.”

(B) ESSENTIAL EMPLOYEE.—The term “essential employee” means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern. “Essential employee.”

(C) PERIOD OF MILITARY CONFLICT.—The term “period of military conflict” means— “Period of military conflict.”

- (i) a period of war declared by the Congress;
- (ii) a period of national emergency declared by the Congress or by the President; or
- (iii) a period of a contingency operation, as defined in section 101(a) of title 10, United States Code.

(D) QUALIFIED BORROWER.—The term “qualified borrower” means— “Qualified borrower.”

- (i) an individual who is an eligible reservist and who received a direct loan under subsection (a) or (b) before being ordered to active duty; or
- (ii) a small business concern that received a direct loan under subsection (a) or (b) before an eligible reservist, who is an essential employee, was ordered to active duty.

(2) DEFERRAL OF DIRECT LOANS.—

Deferral of direct loans.

(A) IN GENERAL.—The Administration shall, upon written request, defer repayment of principal and interest due on a direct loan made under subsection (a) or (b), if such loan was incurred by a qualified borrower.

(B) PERIOD OF DEFERRAL.—The period of deferral for repayment under this paragraph shall begin on the date on which the eligible reservist is ordered to active duty and shall terminate on the date that is 180 days after the date such eligible reservist is discharged or released from active duty.

§ 7(n)(3) to
§ 8(a)(1)(A)

(C) INTEREST RATE REDUCTION DURING DEFERRAL.—
standing any other provision of law, during the period of deferral described in
paragraph (B), the Administration may, in its discretion, reduce the interest rate on any
loan qualifying for a deferral under this paragraph.

(3) DEFERRAL OF LOAN GUARANTEES AND OTHER
FINANCINGS.—The Administration shall—

Deferral of
loan
guarantees.

(A) encourage intermediaries participating in the program under
subsection (m) to defer repayment of a loan made with proceeds made available under that
subsection, if such loan was incurred by a small business concern that is eligible to apply for
assistance under subsection (b)(3); and

(B) not later than 30 days after the date of the enactment of this
subsection, establish guidelines to—

(i) encourage lenders and other intermediaries to defer
repayment of, or provide other relief relating to, loan guarantees under subsection (a) and
financings under section 504 of the Small Business Investment Act of 1958 that were
incurred by small business concerns that are eligible to apply for assistance under subsection
(b)(3), and loan guarantees provided under subsection (m) if the intermediary provides relief
to a small business concern under this paragraph; and

(ii) implement a program to provide for the deferral of
repayment or other relief to any intermediary providing relief to a small business borrower
under this paragraph.

§ 8. (a)³⁹⁴ (1) It shall be the duty of the Administration and it is hereby empowered,
whenever it determines such action is necessary or appropriate—

SBA's additional
powers.
15 USC 637.

(A) to enter into contracts with the United States Government and
any department, agency, or officer thereof having procurement powers obligating the
Administration to furnish articles, equipment, supplies, services, or materials to the
Government or to perform construction work for the Government. In any case in which the
Administration certifies to any officer of the Government having procurement powers that
the Administration is competent and responsible to perform any specific Government
procurement contract to be let by any such officer, such officer shall be authorized in his
discretion to let such procurement contract to the Administration upon such terms and
conditions as may be agreed upon between the Administration and the procurement officer.

³⁹⁴ Section 155 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-650) provides:

Any small business concern that is certified, or otherwise meets the criteria for participation in any program under
section 8(a) of the Small Business Act (15 U.S.C. 637(a)), shall not be required by any State, or political subdivision
thereof, to meet additional criteria or certification, unrelated to the capability to provide the requested products or
services, in order to participate as a small disadvantaged business in any program or project that is funded, in whole
or in part, by the Federal Government.

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§ 8(a)(1)(B) to
§ 8(a)(1)(B)

Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. ³⁹⁵Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price,³⁹⁶

³⁹⁵Sentences from "Not later than 5 days" to last sentence of paragraph added by § 303(d) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3870).

³⁹⁶Last clause added by § 921(b)(2) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816).

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§ 8(a)(1)(C) to
§ 8(a)(2)

(B)³⁹⁷ to arrange for the performance of such procurement contracts negotiating or otherwise letting subcontracts to socially and economically disadvantaged business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 7(j)(15), if—

(i) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted pursuant to subparagraph (D); and

(ii) the prospective contract awardee was a Program Participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation; and³⁹⁸

(D)³⁹⁹ (i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

³⁹⁷Former § 8(a)(1)(B) deleted by § 207(1) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2820). Former § 8(a)(1)(C) renumbered as § 8(a)(1)(B) and new § 8(a)(1)(C) added by sections 207(3) and (4) of P.L. 101-574, respectively. Former § 8(a)(1)(B) read:

(B) to enter into contracts with such agency*, as shall be designated by the President, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and

* Before enactment of PL 99-567, approved Oct. 27, 1986 (100 Stat. 3188), former § 8(a)(1)(B) made an exception for the Department of Defense.

³⁹⁸Sentence deleted by § 207(2) of P.L. 101-574 reads: “No contract may be entered into under subparagraph (B) after September 30, 1988.”

³⁹⁹Section 8(a)(1)(D) added by § 303(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3869).

(II) the anticipated award price of the contract (including options) will exceed \$5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and \$3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is authorized to approve a request from an agency to award a contract opportunity under this subsection on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II). Such approvals shall be granted only on a limited basis.

(2) Notwithstanding subsections (a) and (b) of section 3131 of title 40, United States Code, no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: Provided, That the Administrator shall exercise the authority granted by the paragraph only if—

Performance bonds.

§ 8(a)(2)(A) to § 8(a)(3)(B)(iii) [49 Stat. 195]

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue such bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958; and

Surety bond guarantee. [15 USC 694a].

(D) the small business is determined to be a startup concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.⁴⁰⁰

⁴⁰⁰Program extended to Sept. 30, 1988, by § 3 of PL 99-567, approved Oct. 27, 1986 (100 Stat. 3188), no further extensions enacted. See § 7(j)(13) of the Act.

(3) (A)⁴⁰¹ Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B) (i) For purposes of paragraph (1) a “fair market price” shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

“Fair market price.”

(ii) The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

§ 8(a)(3)(C) to § 8(a)(4)(A)(ii)(II)

(iii) The estimate of a current fair market price for a requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to insure comparability. Such adjustments shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs which may be deemed appropriate.

(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (1)(A).

(4) (A) For purposes of this section, the term “socially and economically disadvantaged small business concern” means any small business concern which meets the requirements of subparagraph (B) and—

“Socially and economically disadvantaged small business concern.”

(i) which is at least 51 per centum unconditionally⁴⁰² owned by—

⁴⁰¹Section 8(a)(3)(A) rewritten and paragraphs 8(a)(3)(B) through (D) added by § 303(e) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3870).

⁴⁰²Term “unconditionally” in subsections 8(a)(4)(A)(i) and (ii) added by subsections 6(c)(1) and (2) of PL 101-37, approved June 15, 1989 (103 Stat. 72), respectively.

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(I) one or more socially and economically disadvantaged individuals,

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe),⁴⁰³ or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals,

§ 8(a)(4)(A)(ii)(III) to § 8(a)(6)(A)

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small concern are controlled by one or more—

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I), or

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II)⁴⁰⁴ or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).⁴⁰⁵

(C)⁴⁰⁶ Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

⁴⁰³Phrase “or wholly owned business entity of such tribe” in subsections 8(a)(4)(A)(i)(II) and 8(a)(4)(A)(ii)(II) added by § 204(b)(1) and (2), respectively, of P.L. 101-574 (104 Stat. 2819), approved Nov. 15, 1990.

⁴⁰⁴Section 8(a)(4) rewritten by § 18015 of PL 99-272, approved April 7, 1986 (100 Stat. 370), to add “an economically disadvantaged Indian tribe” and its members to the definition of “socially and economically disadvantaged small business concern.” For definition of Indian tribe, see § 8(a)(13).

⁴⁰⁵Section 8(a)(4) rewritten again to add “an economically disadvantaged Native Hawaiian organization” to the definition of “socially and economically disadvantaged small business concern” by § 207(c) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3861). For definition of Native Hawaiian organization see § 8(a)(15).

⁴⁰⁶Section 8(a)(4)(C) added by § 209(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3864).

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

Socially disadvantaged individual.

(6) (A) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding government awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.⁴⁰⁷

Economically disadvantaged individual.

§ 8(a)(6)(B) to § 8(a)(6)(D)(ii)

(B)⁴⁰⁸ Each Program Participant shall annually submit to the Administration—

(i) a personal financial statement for each disadvantaged owner;

(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

(C) (i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine whether such Program Participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities when compared to other concerns in the same business area, which are not socially disadvantaged.

Review.

(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 7(j)(10)(G) subject to the right to a hearing as provided for under paragraph (9).

⁴⁰⁷Last sentence added by § 8015(c) of PL 99-272, approved April 7, 1986 (100 Stat. 371).

⁴⁰⁸Paragraphs 8(a)(6)(B) through (E) added by § 209(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3863), effective October 1, 1989, per § 803 thereof.

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(D) (i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the amount of funds or other assets withdrawn from a Program Participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan. Withdrawal of assets.

(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall— § 8(a)(6)(D)(ii)(I) to § 8(a)(7)(A)

(I) initiate a proceeding to terminate the Program Participant pursuant to section 7(j)(10)(F), subject to the right to a hearing under paragraph (9); or

(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation— Exclusions from net worth.

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

(7) (A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.⁴⁰⁹ Reasonable prospects for success.

⁴⁰⁹Section 203 of P.L. 101-574, approved Nov. 15, 1990, provides:

(a) The Small Business Administration may prescribe a minimum period of time during which a prospective Program Participant must be in operation in order to meet the eligibility requirements of section 8(a)(7)(A) of the Small Business Act (15 U.S.C. 637(a)(7)(A)), only if the Administration provides a waiver of such minimum period as set forth in subsection (b).

(b) (1) The Administration shall provide that any requirement it establishes regarding the period of time a

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(B)⁴¹⁰ Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

Logical
business
progression.

(8) All determinations made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.⁴¹¹

Prejudice or
bias deter-
mination.

(9)⁴¹² (A) Subject to the provisions of subparagraph (E), the Administration⁴¹³, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5, United States Code.

Procedural
due process.

(B) The actions referred to in subparagraph (A) are—

(i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);

prospective Program Participant must be in operation may be waived and, a prospective Program Participant who otherwise meets the requirements of section 8(a)(7)(A) of the Small Business Act, shall be considered to have demonstrated reasonable prospects for success, if—

(A) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

(B) the prospective Program Participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;

(C) the prospective Program Participant has adequate capital to carry out its business plan;

(D) the prospective Program Participant has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category in which the prospective Program Participant is seeking Program certification; and

(E) the prospective Program Participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform such contracts.

(2) The authority to make the determination that a prospective Program Participant has demonstrated its potential for success by meeting the criteria specified in paragraph (1) of this subsection shall be made by the Administrator of the Small Business Administration, or a designee of such officer.

⁴¹⁰Section 8(a)(7)(B) added by § 303(g) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3872).

⁴¹¹Section 8(a)(8) rewritten by § 105 of PL 96-481, approved Oct. 21, 1980 (94 Stat. 2321).

⁴¹²Section 8(a)(9) rewritten by § 409 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3878), to spell out the procedural due process requirements for a denial of assistance.

⁴¹³“Administration” substituted for “Administrator” by § 17(1) of PL 101-37, approved June 15, 1989 (103 Stat. 74).

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- (ii) a termination pursuant to section 7(j)(10)(F);
- (iii) a graduation pursuant to section 7(j)(10)(G)⁴¹⁴; and
- (iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's⁴¹⁵ proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law. § 8(a)(9)(D) to § 8(a)(12)(A)

(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;

(ii) is untimely filed;

(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection. Such program shall make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few Program Participants and from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.⁴¹⁶

Outreach.

⁴¹⁴Reference to “section 7(j)(10)(G)” changed from “section 7(j)(10)(H)” by § 17(2) of PL 101-37, supra.

⁴¹⁵“Administration’s” substituted for “Administrator’s” by § 17(3) of PL 101-37, supra.

⁴¹⁶Last sentence in § 8(a)(10) added by § 201(b) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3858).

(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

§ 8(a)(12)(B) to § 8(a)(12)(E) (12)⁴¹⁷ (A) The Administration shall require each concern eligible to subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

Capability statements.

(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of \$50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

Contract opportunities forecast.

- (i) The approximate number of individual contract opportunities (and the number of opportunities within a class)
- (ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.
- (iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.
- (iv) The activity responsible for the award and administration of the contract.

⁴¹⁷Section 8(a)(12) rewritten by § 501 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3880), effective October 1, 1989, per § 803(b)(3)(C) thereof. For prior text, see § 202(a) of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757).

(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and

(ii) the Administrator.

(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

§ 8(a)(12)(F) to § 8(a)(15)(A)

(F) Such forecasts shall be available to small business concerns.

(13)⁴¹⁸ For purposes of this subsection, the term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

“Indian tribe.”

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.

(14)⁴¹⁹ LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees to satisfy the requirements of section 46.

Composition of labor force.

⁴¹⁸New § 8(a)(13) added by § 18015(d) of PL 99-272, approved April 7, 1986 (100 Stat. 371). For definition of “Qualified Indian Tribe” under § 7, see § 3(d).

⁴¹⁹New § 8(a)(14) added by § 921(c)(1) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816). Reference to section 15(o) at end of paragraphs (B) and (C) substituted for reference to section 15(n) by section 10(b)(3) of PL 100-26, approved April 21, 1987 (101 Stat. 273). Paragraph 8(a)(14) rewritten by § 1696(b)(2) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2091). Text of former paragraph 8(a)(14) is reprinted below:

(A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

(i) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and

(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

(B) The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 15(o).

(C) The Administration shall establish, through public rulemaking, requirements similar to those specified in subparagraph (A) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such subparagraph. The percentage applicable to any

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(15) For purposes of this subsection, the term “Native Hawaiian Organization” means any community service organization serving Native Hawaiians in the State of Hawaii which—

“Native Hawaiian Organization.”

§ 8(a)(15)(B) to
§ 8(a)(16)(B)

(A)⁴²⁰ is a nonprofit corporation that has filed articles of incorporation with the director (or the designee thereof) of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency,

(B) is controlled by Native Hawaiians, and

(C) whose business activities will principally benefit such Native Hawaiians.

(16)⁴²¹ (A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

Sole source contracts.

such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 15(o) for the same industry category.

⁴²⁰ Subparagraph 8(a)(15)(A) rewritten by § 807 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Text of former subparagraph 8(a)(15)(A): “is a not-for-profit organization chartered by the State of Hawaii,”

⁴²¹Section 8(a)(16) added by § 303(c) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3870). Section 602 of PL 100-656 (102 Stat. 3887) provides:

- (a) Section 8(a)(16)...shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act.
- (b) The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act to a joint venture notwithstanding the size status of such joint venture if—
 - (1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act; and
 - (2) such Program Participant:
 - (A) owns 51 per centum or more of such joint venture;
 - (B) is located on the reservation of such tribe;
 - (C) performs most of its activities on such reservation; and
 - (D) employs members of such tribe for at least 50 per centum of its total workforce.
- (c) A Program Participant, as a party to a joint venture shall receive no more than two contracts due solely to the provisions of subsection (b).
- (d) The Administration may permit more than one small business concern owned by a socially and economically disadvantaged Indian tribe to be eligible for assistance pursuant to this section if—
 - (1) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and
 - (2) The individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.
- (e) Subsection (b) shall cease to be effective after September 30, 1994. [Sunset date changed from 1991 to 1994 by § 205(2) of PL 101-574, approved Nov. 15, 1990 (104 Stat. 2820)].

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(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(ii) the award of such contract would be consistent with the Program Participant's business plan; and

(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 7(j)(10)(I).

(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.

§ 8(a)(17)(A) to
§ 8(a)(17)(C)

(17)⁴²² (A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract, which contract has as its principal purpose the supply of a product to be let pursuant to this subsection, subsection (m), section 15(a), section 31, or section 36⁴²³ solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

Non-
manufacturer.

(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

(i) be primarily engaged in the wholesale or retail trade;

(ii)⁴²⁴ be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;

(iii) be a regular dealer, as defined pursuant to [chapter 65, United States Code], in the product to be offered the Government or be specifically exempted from such section by section 7(j)(13)(C); and

(iv)⁴²⁵ represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(I) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can

⁴²²Section 8(a)(17) added by § 303(h) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3872).

⁴²³ Phrase “any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 15” replaced with current language by § 864(a)(1) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 927).

⁴²⁴New subsection 8(a)(17)(B)(ii) added and existing subsections renumbered by § 10(e) of PL 101-37, approved June 15, 1989 (103 Stat. 73).

⁴²⁵Subsection 8(a)(17)(B)(iv) rewritten by § 210 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2821).

reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or
(II) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

§ 8(a)(18)(A) to
§ 8(a)(18)(C)(ii)(IV) (C)⁴²⁶ LIMITATION.—This paragraph shall not apply to a contract that has as its principal purpose the acquisition of services or construction.

(18)⁴²⁷ (A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant⁴²⁸ during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 7(j) (10), or section 7(a)(20).

SBA employees, prohibited actions.

(B) The activities and transactions prohibited by subparagraph (A) include—

(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

(iii) the receipt of any other benefit or right that may be an incident of ownership.

(C) (i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

(ii) The employees referred to in clause (i) are—

(I) regional administrators;

⁴²⁶ New subparagraph (C) added by § 864(a)(2) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 927).

⁴²⁷Section 8(a)(18) added by § 402 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3873).

⁴²⁸Term “certified” deleted by § 12 of PL 101-37, approved June 15, 1989 (103 Stat. 73), to make clear that the prohibition applies to anyone who was a Program Participant during such employee's employment at SBA.

SMALL BUSINESS ACT

(II) district directors;

(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or § 8(a)(18)(C)(ii)(V) to § 8(a)(20)(A) 7(j)(10); and

(V) such other employees as the Administrator may deem appropriate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812).

(19)⁴²⁹ (A) Any employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity conducted pursuant to this subsection or section 7(j), shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicited or directed.

Political actions prohibited.

Inspector General referral.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action⁴³⁰ which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

⁴²⁹Section 8(a)(19) added by § 403 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3874).

⁴³⁰Phrase "imposed by the Administrator" deleted by § 13 of PL 101-37, approved June 15, 1989 (103 Stat. 73).

§ 8(a)(20)(A)(i) to
§ 8(a)(21)(B)(iii)

(20)⁴³¹ (A) Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

Reports.

(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

Inspector
General
referral.

(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered “good cause” for the initiation of a termination proceeding pursuant to section 7(j)(10)(F).

(21)⁴³² (A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

Contract
performance.

(B)⁴³³ The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

⁴³¹Section 8(a)(20) added by § 404 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3874).

⁴³²Section 8(a)(21) added by § 407 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3876), effective with respect to contracts entered into on or after June 1, 1989, per § 803(b)(2) of PL 100-656.

⁴³³Subsection 8(a)(21)(B) rewritten by § 16(1) of PL 101-37, approved June 15, 1989 (103 Stat. 74).

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a);

(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(I) such concern has exited the Capital Ownership Development Program;

(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

(III) the disadvantaged owners will maintain control of daily business operations.

(C)⁴³⁴ The Administrator may waive the requirements of subparagraph (A) if—

(i) in the case of subparagraph (B)(i), (ii) and (iv), he is requested to do so prior to the actual relinquishment of ownership or control; and

(ii) in the case of subparagraph (B)(iii), he is requested to do so as soon as possible after the incapacity or death occurs.

(D) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

(E) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

⁴³⁴New subsection 8(a)(21)(C) added and existing subsections 8(a)(21)(C) and (D) renumbered as 8(a)(21)(D) and (E), respectively, by § 16(2) of PL 101-37, approved June 15, 1989 (103 Stat. 74). References to subparagraphs (B)(iii) and (iv) in subparagraph (C)(i) and (ii) erroneously reversed.

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(b) It shall also be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary—

§ 8(b)(1)(A)(i) to § 8(b)(1)(B)

(1)⁴³⁵ (A) to provide technical, managerial, and informational aids to small business concerns—

managerial, and informational aid to small business concerns.

(i) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

(ii) by cooperating and advising with—

⁴³⁵Section 8(b)(1) redesignated as § 8(b)(1)(A) by § 1017 of PL 89-754, the Demonstration Cities and Metropolitan Development Act of 1966, approved Nov. 3, 1966 (80 Stat. 1255), which also added the substance of subpar. (C) below as subpar. (B). The cosponsorship authority was originally added by § 5(a) of P.L. 98-362, approved July 16, 1984 (98 Stat. 431). Section 8(b)(1)(A) was completely rewritten by § 504(a) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Section 504(b) of P.L. 106-554 extends cosponsorship authority until September 30, 2003. Text of former § 8(b)(1)(A) is reprinted below:

to provide technical and managerial aids to small business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, computer security, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, including information on the benefits and risks of franchising by disseminating such information, and by such other activities as are deemed appropriate by the Administration. Such assistance also may be provided to small business concerns by the Administration through cooperation with a profit-making concern (hereafter in this paragraph referred to as a "cosponsor") to provide training: Provided, That the Administration shall take such actions as it deems appropriate to ensure that any Administration program participating in such cosponsored activities receives appropriate recognition and publicity, and that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor, to avoid unnecessary promotion of the products or services of the cosponsor, and to minimize utilization of any one cosponsor in a marketing area. Such actions shall include, but not be limited to: (i) developing an agreement, executed on behalf of the agency by an employee of the agency in Washington, District of Columbia, and who shall also approve, in advance, any printed materials to be distributed at the conference, which specifies the standard terms and conditions of the cooperation, the use of which shall be mandatory; (ii) prohibiting any fee or charge from being imposed upon any small business concern for receiving assistance in excess of a minimal amount to cover the direct costs of providing such assistance; (iii) prohibiting the release to the cosponsor of any of the Administration's lists of names and addresses of small business concerns; and (iv) requiring that all printed materials which contain the names of both the Administration and the cosponsor include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of the products or services of the cosponsor. In the case of cosponsored activities which include the participation of a Federal, State, or local public official or agency, the Administration shall take such actions as it deems necessary to ensure that the cooperation does not constitute or imply an endorsement by the Administration of or give undue recognition to the public official or agency, and the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official

Clause 8(b)(1)(A)(ii) deleted by § 132(b)(1) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-645). Subclauses 8(b)(1)(A)(i)(I) through (IV) were redesignated as clauses (i) through (iv) and items (aa) and (bb) of former subclause (II) redesignated as subclauses (I) and (II) by § 132(b)(2) through (5). Subsection 132(c) provides that the changes made by § 132 are repealed on October 1, 2006. The text of former clause 8(b)(1)(A)(ii) is reprinted below:

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(I) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and

(II) other Federal and State agencies;

(iii) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and

(iv) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate.

(B)⁴³⁶ To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (sic) (ACE) for the purposes of section 8(b)(1)(A) of this Act. To facilitate the implementation of such volunteer programs the Administration⁴³⁷ shall maintain

Volunteer programs, establishment and operation.

-
- (ii) through cooperation with a profit-making concern (referred to in this paragraph as a “cosponsor”), training, information, and education to small business concerns, except that the Administration shall
- (I) take such actions as it determines to be appropriate to ensure that—
- (aa) the Administration receives appropriate recognition and publicity;
 - (bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;
 - (cc) unnecessary promotion of the products or services of the cosponsor is avoided; and
 - (dd) utilization of any 1 cosponsor in a marketing area is minimized; and
- (II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—
- (aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;
 - (bb) the terms and conditions of the cooperation shall be specified;
 - (cc) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;
 - (dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;
 - (ee) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor; and
 - (ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.

⁴³⁶Section 8(b)(1)(B) - (F) were added by § 101 of PL 95-510, approved Oct. 24, 1978 (92 Stat. 1780), effective Oct. 1, 1979. For prior history of this section, see § 1017 of PL 89-754, the Demonstration Cities and Metropolitan Development Act of 1966, approved Nov. 3, 1966 (80 Stat. 1255); § 105 of PL 90-104, the Small Business Act Amendments of 1967, approved Oct. 11, 1967 (81 Stat. 268); and § 302(e) of PL 93-113, the Domestic Volunteer Service Act of 1973, approved Oct. 1, 1973 (87 Stat. 394). For PL 93-113, see page 911 of this Handbook.

⁴³⁷ Language following the footnote signal to the end of the sentence added by § 141(a)(2) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-645). The following language was deleted: “may maintain at its headquarters and pay the

§ 8(b)(1)(C) to
 § 8(b)(1)(D)

at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this Act, and may use payments made by the Administration pursuant to this subparagraph for such solicitation and the management of the contributions received.⁴³⁸

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic services:

(i) such volunteers, while carrying out activities under section 8(b)(1) of this Act shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28, United States Code; and for the purposes of subchapter I of chapter 81 of title 5, United States Code (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term “employee” as defined in section 8101 of title 5, United States Code, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-11 employee;

[5 USC 8101].

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this Act, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5, United States Code, for individuals serving without pay; and

Volunteer reimbursement.

[5 USC 5703].

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to section 8(b)(1) of this Act shall be subject to any tax or charge or be treated as

expenses of a team of volunteers subject to such conditions and limitations as the Administration deems appropriate: Provided, That any”. Section 141(b) provides that the Administration shall, not later than 180 days after the date of enactment of this Act, promulgate regulations to carry out the amendments made by subsection (a).

⁴³⁸ Last sentence of subparagraph 8(b)(1)(B) added by § 809 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Phrase beginning with “and the management” added by § 141(a)(3) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-645). Section 141(b) requires the promulgation of regulations within 180 days after enactment.

wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

§ 8(b)(1)(E) to § 8(b)(6)

(E)⁴³⁹ In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution, which students shall be entitled to receive educational credits for their activities.

Small business institute.

(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to section 8(b)(1) of this Act, as amended (15 U.S.C. 637(b)(1)) to which volunteers have been made parties.

Defense proceedings, expenses.

(G) In carrying out its functions under this Act and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988 the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this Act, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be more effectively utilized;

(4) to consult and cooperate with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small-business concerns;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

⁴³⁹Subparagraphs 8(b)(1)(E) and (F) redesignated as (F) and (G) and new subparagraph (E) added by § 304 of PL 102-564, approved Oct. 28, 1992 (106 Stat. 4262).

SMALL BUSINESS ACT

§ 8(b)(7)(A) to
§ 8(b)(7)(C)

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated “small business concerns” for the purpose of effectuating the provisions of this Act. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a “small business concern” in accordance with criteria expressed in this Act. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a “small business concern.” Offices of the Government having procurement or lending powers, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administration's determination as to which enterprises are to be designated “small-business concerns,” as authorized and directed under this paragraph;

Certify
concern as
small.

(7) (A) to certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence, preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

Certificate
of
competency.

(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 6502 of title 41, United States Code, he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

[41 USC 6502].

(C)⁴⁴⁰ In any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for

⁴⁴⁰Section 501 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553), amended paragraph (7) of § 8(b) to expand the certificate of competency program to include within SBA jurisdiction final determination of all elements of eligibility and responsibility. Section 401 of PL 98-577, approved Oct. 30, 1984, Small Business and Federal Procurement Competition Enhancement Act of 1984 (98 Stat. 3066), added the sentence beginning “Notwithstanding the first sentence . . .” to the end of this paragraph.

certification if the small business concern to which the referral pertains declines to have the application processed.

(8) to obtain from any Federal department, establishment, or agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as it may deem pertinent in carrying out its functions under this Act;

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this Act;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this Act and of the Small Business Investment Act of 1958; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with Section 5703 of title 5, United States Code, to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meetings of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;⁴⁴¹

Establish
Advisory
Board.

[5 USC 5703].

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 7(b)(3), to local public agencies (as defined in section 110(h) of the Housing Act of

⁴⁴¹Authority to establish advisory boards for the purpose of the Small Business Investment Act of 1958, as amended, and to pay expenses, per diem, and rent accommodations in connection with advisory board activities added by § 106 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 269).

§ 8(b)(15) to
§ 8(b)(17)

1949) and to small-business concerns to be displaced by federally aided urban renewal projects in order to assist such small-business concerns in reestablishing their operations;⁴⁴²
(15)⁴⁴³ to disseminate, without regard to the provisions of section 3204 of title 39, United States Code, data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

Information
dissemination.
[39 USC 3204].

(16)⁴⁴⁴ to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

(17)⁴⁴⁵ to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the establishment

⁴⁴²Paragraph 14 of § 8(b) added by § 305(c) of PL 88-560, the Housing Act of 1964, approved Sept. 2, 1964 (78 Stat. 786).

⁴⁴³Paragraph 15 of § 8(b) added by § 107 of PL 90-104, approved Oct. 11, 1967 (81 Stat. 269).

⁴⁴⁴Section 8(b)(16) added by § 202 of PL 100-533, approved Oct. 25, 1988 (102 Stat. 2692). Text of new § 8(b)(16) incorporates former § 8(c), which was rewritten by § 201 of PL 100-533. The same language was also included in § 127(b) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3003). Section 127(c) of PL 100-590 provides that:

There is authorized to be appropriated \$10,000,000 to carry out the demonstration projects required pursuant to subsection (a). The initial projects authorized to be financed by this section shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this subsection, except that it shall insure that all eligible sources are provided a reasonable opportunity to submit proposals.

Section 127(e) of PL 100-590 adds:

New spending authority or authority to enter into contracts as authorized in this section shall be effective only to such extent and in such amounts as are provided in advance in appropriations Acts.

Section 127(d) of PL 100-590 provides that:

For the purposes of this section, the term 'small business concern owned and controlled by women' means any small business concern--

- (1) that is at least 51 per centum owned by one or more women; and
- (2) whose management and daily business operations are controlled by one or more of such women.

⁴⁴⁵ New paragraph 8(b)(17) added by § 708(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2637). Section 105 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 626) provides:

Sec. 105. INCREASING THE NUMBER OF OUTREACH CENTERS.

(a) IN GENERAL.—The Administrator shall use the authority in section 8(b)(17) of the Small Business Act (15 U.S.C. 637(b)(17)) to ensure that the number of Veterans Business Outreach Centers throughout the United States increases—

- (1) subject to subsection (b), by at least 2, for each of fiscal years 2008 and 2009; and
- (2) by the number that the Administrator considers appropriate, based on need, for each fiscal year thereafter.

(b) LIMITATION.—Subsection (a)(1) shall apply in a fiscal year if, for that fiscal year, the amount made available for the Office of Veterans Business Development is more than the amount made available for the Office of Veterans Business Development for fiscal year 2007.

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§ 8(d)(1) to § 8(d)(2)(A) implementation of outreach programs for disabled veterans (as defined in section 1(3) of title 38, United States Code),⁴⁴⁶ veterans, and members of a reserve component of the Armed Forces.

[38 USC 4211(3)].

(c)⁴⁴⁷ [Reserved].

(d)⁴⁴⁸ (1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans,⁴⁴⁹ small business concerns owned and controlled by service-disabled veterans,⁴⁵⁰ qualified HUBZone small business concerns,⁴⁵¹ small business concerns owned and controlled by socially and economically disadvantaged

Contract opportunities for certain small business concerns.

⁴⁴⁶ Language following the footnote signal added by § 144 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-647).

⁴⁴⁷Section 8(c) was rewritten by § 201 of PL 100-533, approved Oct. 25, 1988 (102 Stat. 2691) and text of former § 8(c) was moved to § 8(b)(16). Section 8(c) repealed by § 3 of PL 102-191, approved Dec. 5, 1991 (105 Stat. 1591). Section 3 of PL 102-191 provides: "Projects funded pursuant to the provisions of former subsection (c) shall be deemed to be funded under and shall be treated as if funded under section 28 [see § 28(2)] of the Small Business Act." The same section of P.L. 102-191 renumbered the remaining subsections in § 8 as "subsections (c) through (k)" when the correct numbering should be "subsections (c) through (i)." The numbering of these subsections was corrected by § 232(a)(6) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1001). Text of former § 8(c):

- (1) Subject to the requirements of paragraph (2), the Administration shall provide financial assistance to private organizations to conduct demonstration projects for the benefit of small business concerns owned and controlled by women.
- (2) No amount of financial assistance shall be provided pursuant to this subsection unless the recipient organization agrees, as a condition of receiving such assistance, that--
 - (A) it will obtain, after its application has been approved but prior to the disbursement of funds pursuant to this subsection, cash contributions from private sector sources in an amount at least equal to the amount of funds such organization will receive under this subsection; and
 - (B) it will provide the types of services and assistance to present and potential women owners of small business concerns as are described in paragraph (3). For the purposes of this subsection such concerns may be either "start-up" businesses or established "on-going" concerns.
- (3) The types of services and assistance referred to in paragraph (2)(B) shall include the following:
 - (A) Financial assistance, which assistance shall include training and counseling in how to apply for and secure business credit and investment capital; prepare and present financial statements; manage cash-flow and otherwise manage the financial operations of a business concern;
 - (B) Management assistance, which assistance shall include training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and
 - (C) Marketing assistance, which assistance shall include training and counseling in how to identify and segment domestic and international market opportunities; prepare and execute marketing plans; develop pricing strategies; locate contract opportunities; negotiate contracts; and utilize varying public relations and advertising techniques.
- (4) Applications for financial assistance pursuant to this subsection shall be evaluated and ranked in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. Such criteria shall include--
 - (A) a criterion that specifically refers to the experience of the offering organization in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;
 - (B) a criterion that specifically refers to the present ability of the offering organization to commence a demonstration project within a minimum amount of time; and
 - (C) a criterion that specifically refers to the ability of the applicant organization to provide training and services to a representative number of women who are both socially and economically disadvantaged.
- (5) The financial assistance authorized pursuant to this subsection shall be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement.

individuals and small business concerns owned and controlled by women,⁴⁵² shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals,⁴⁵³ and small business concerns owned and controlled by women.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed the simplified acquisition threshold;⁴⁵⁴

(6) (A) The Administration shall prepare and transmit a report to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this subsection. Such report shall provide information concerning—

- (i) the number of individuals receiving assistance;
- (ii) the number of start-up business concerns formed;
- (iii) the gross receipts of assisted concerns;
- (iv) increases or decreases in profits of assisted concerns; and
- (v) the employment increases or decreases of assisted concerns.

(B) The report required pursuant to subparagraph (A) shall cover at least a twenty-four month period and shall be submitted not later than thirty months after the effective date of this paragraph.

(7) This subsection shall cease to be effective after September 30, 1991.

⁴⁴⁸Section 8(d) added by § 7 of PL 87-305, approved Sept. 26, 1961 (75 Stat. 667). Substantially rewritten by § 211 of PL 95-507, approved Oct. 24, 1978 (92 Stat. 1757). Redesignated as § 8(c) by § 3 of PL 102-191.

⁴⁴⁹References in this paragraph to “small business concerns owned and controlled by veterans” added by § 803(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁴⁵⁰References in this subsection to “small business concerns owned and controlled by veterans” and “small business concerns owned and controlled by service-disabled veterans” added by § 501 of P.L. 106-50, approved August 17, 1999 (113 Stat. 247).

⁴⁵¹References in this paragraph and paragraphs 8(d)(3), (4), (6), and (10) to “qualified HUBZone small business concerns” added by § 603(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2631).

⁴⁵²References in this paragraph and in paragraphs 8(d)(3), (4), (6) and (10) to “small business concerns owned and controlled by women” added by § 7106(b)(1) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat 3375).

⁴⁵³Clause beginning with “including contracts” to “individuals” added by § 402(a) of PL 98-577, approved Oct. 30, 1984 (98 Stat. 3066).

⁴⁵⁴Phrase “small purchase threshold” inserted in place of “\$10,000” by § 806(e)(2)(A) of P.L. 101-510, approved Nov. 5, 1989 (104 Stat. 1593). Phrase “simplified acquisition threshold” substituted for “small purchase threshold” by § 4404(b) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3349). For a definition of “simplified acquisition threshold,” see § 3(m) of this Act.

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(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

(3) The clause required by paragraph (2) shall be as follows:

Required
clause.

“(A) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans,⁴⁵⁵ qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals,⁴⁵⁶ and small business concerns owned and controlled by women.

“(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

“(C) As used in this contract, the term ‘small business concern’ shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term ‘small business concern owned and controlled by socially and economically disadvantaged individuals’ shall mean a small business concern—

§ 8(d)(3)

“(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

“(ii) whose management and daily business operations are controlled by one or more of such individuals.

⁴⁵⁵ References in this subparagraph to “service-disabled veterans” added by § 803(2)(A) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁴⁵⁶ Clause beginning with “including contracts” to “individuals” added by § 402(b) of PL 98-577.

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“The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans⁴⁵⁷, and other minorities, or any other individual found to be disadvantaged by the Administration pursuant to section 8(a) of the Small Business Act.

“(D)⁴⁵⁸The term ‘small business concern owned and controlled by women’ shall mean a small business concern—

“(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

“(ii) whose management and daily business operations are controlled by one or more women.

“(E)⁴⁵⁹ The term ‘small business concern owned and controlled by veterans’ shall mean a small business concern—

“(i) which is at least 51 per centum owned by one or more eligible veterans; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more veterans; and

“(ii) whose management and daily business operations are controlled by such veterans. The contractor shall treat as veterans all individuals who are veterans within the meaning of the term under section 3(q) of the Small Business Act.

“(F) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women. § 8(d)(4)(A) to § 8(d)(4)(D)

“(G)⁴⁶⁰In this contract, the term ‘qualified HUBZone small business concern’ has the meaning given that term in section 3(p) of the Small Business Act.”

⁴⁵⁷“Asian Pacific Americans” added by § 118(b) of PL 96-302, approved July 2, 1980 (94 Stat. 833). Section 118(c)(2) of PL 96-302 further provides that this provision shall apply as if included in the amendment made by § 211 of PL 95-507, which substantially rewrote § 8(d) of the Small Business Act.

⁴⁵⁸Subsection 7106(b)(3) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3375), rewrote subparagraph (D) to section 8(d)(3) and added new subparagraph (E).

⁴⁵⁹ Subparagraphs (E) and (F) of the clause redesignated as (F) and (G), respectively, and new subparagraph (E) added by § 501(b)(2) of P.L. 106-50, approved August 17, 1999 (113 Stat. 247).

⁴⁶⁰ Paragraph 8(d)(3)(F) added by § 603(a)(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2631).

“(H)⁴⁶¹ In this contract, the term ‘small business concern owned and controlled by service-disabled veterans’ has the meaning given that term in section 3(q).”

(4) (A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed \$1,000,000, in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

- (i) is to be awarded, or was let, pursuant to the negotiated method of procurement;
- (ii) is required to include the clause stated in paragraph (3),
- (iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000 in the case of all other contracts, and
- (iv) which offers subcontracting possibilities,

the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns, qualified HUBZone small business concerns,⁴⁶² small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans,⁴⁶³ small business concerns owned and controlled by socially and economically

⁴⁶¹ New subparagraph 8(d)(3)(H) added by § 1832(c) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2660).

⁴⁶² Reference to “qualified HUBZone small business concerns” added by § 615(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁴⁶³ Reference to “small business concerns owned and controlled by service-disabled veterans” here and in paragraphs (4)

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disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of the contract.

(E) Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection and for small business concerns owned and controlled by women, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: Provided, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

Incentives for small business subcontracting.

(F)⁴⁶⁴ (i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

Liquidated damages.

(ii) The contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the imposition of damages and the amount thereof. The final decision of a contracting officer regarding the contractor's obligation to pay such damages, or the amounts thereof, shall be subject to chapter 71 of title 41, United States Code.

[41 USC ch. 71].

(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract

§ 8(d)(4)(F)(iii)(III) to § 8(d)(6)(A)

(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(E), (6)(A), (6)(C), (6)(F), and (10)(B) added by § 803(3) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁴⁶⁴Section 8(d)(4)(F) added by § 304(a) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3872). Section 304(b) of PL 100-656 provides that:

The contract clause required by section 8(d)(4)(F)... shall be made part of the Federal Acquisition Regulation and promulgated pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(G)⁴⁶⁵ The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

Subcontracting plans.

(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(ii) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(5) (A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded pursuant to the formal advertising method of procurement,

(ii) is required to contain the clause stated in paragraph (3) of this subsection,

(iii) may exceed \$1,000,000 in the case of a contract for the construction of any public facility, or \$500,000, in the case of all other contracts, and

(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals for the utilization as subcontractors of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns,⁴⁶⁶ small business concerns owned and controlled by socially and

⁴⁶⁵ New subparagraph 8(d)(4)(G) added by § 415 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2619).

⁴⁶⁶ References to “qualified HUBZone small business concerns” throughout paragraph 8(d)(6) added by § 603(a)(4) of P.L.

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economically disadvantaged individuals, and small business concerns owned and controlled by women;

(B) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of such individual;

(C) a description of the efforts the offeror or bidder will take to assure that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by the socially and economically disadvantaged individuals, and small business concerns owned and controlled by women will have an equitable opportunity to compete for subcontracts;

(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of \$1,000,000 in the case of a contract for the construction of any public facility, or in excess of \$500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5), and⁴⁶⁷ assurances at a minimum that the offeror or bidder, and all subcontractors required to maintain subcontracting plans pursuant to this paragraph, will—

(i) review and approve subcontracting plans submitted by their subcontractors;

(ii) monitor subcontractor compliance with their approved subcontracting plans;

105-135, approved Dec. 2, 1997 (111 Stat. 2631).

⁴⁶⁷ Language from footnote signal through clause (vi) added by § 1614(a)(1) of P.L. 113-66, approved Dec. 26, 2013 (127 Stat. 948). Section 1614 also provides:

(c) IMPLEMENTATION AND EFFECTIVE DATE.—

(1) REQUIREMENT FOR PLAN.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Small Business Administration, the Secretary of Defense, and the Administrator of General Services shall submit to the Committee on Small Business and the Committee on Armed Services of the House of Representatives, and the Committee on Small Business and Entrepreneurship and the Committee on Armed Services of the Senate a plan to implement this section and the amendments made by this section. The plan shall contain assurances that the appropriate tracking mechanisms are in place to enable transparency of subcontracting activities at all tiers.

(2) COMPLETION OF PLAN ACTIONS.—Not later than one year after the date of the enactment of this Act, the Administrator of the Small Business Administration, the Secretary of defense, and the Administrator of General Services shall complete the actions required by the plan.

(3) REGULATIONS.—No later than 18 months after the date of the enactment of this Act, the Administrator of the Small Business Administration shall promulgate any regulations necessary, and the Federal Acquisition Regulation shall be revised, to implement this section and the amendments made by this section.

(4) APPLICABILITY.—Any regulations promulgated pursuant to paragraph (3) shall apply to contracts entered into after the last day of the fiscal year in which the regulations are promulgated.

(iii) ensure that subcontracting reports are submitted by their subcontractors when required;

(iv) acknowledge receipt of their subcontractors' reports;

(v) compare the performance of their subcontractors to subcontracting plans and goals; and

(vi) discuss performance with subcontractors when necessary to ensure their subcontractors make a good faith effort to comply with their subcontracting plans;

(E)⁴⁶⁸ assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and efforts to identify and award subcontracts to such small business concerns.

§ 8(d)(6)(G) to
§ 8(d)(7)(B)

⁴⁶⁸ Section 1653(b) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2082) provides:

(b) ADDITIONAL REQUIREMENTS.—

(1) REPORTING REQUIREMENTS.—Not later than 1 year after the date of the enactment of this part, the Administrator of the Small Business Administration shall take such actions as are necessary to ensure that the electronic subcontracting reporting system established by the Administration to carry out the requirement of section 8(d)(6)(E) of the Small Business Act is modified to ensure that it can identify entities that fail to submit required reports.

(2) ANNUAL REPORT.—Not later than March 31 of each year, the Administrator of the Small Business Administration shall provide the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report, based on data available through existing systems, that sets forth, by agency (and to the extent practicable, by type of goal or plan), the following information:

(A) the percentage of entities required to submit reports pursuant to section 8(d)(6) of the Small Business Act that filed such reports and that failed to file such reports during the prior fiscal year;

(B) the percentage of entities filing such reports that met, exceeded, or failed to meet goals set forth in their subcontracting plans during the prior fiscal year; and

(C) the aggregate value by which such entities exceeded, or failed to meet, their subcontracting goals during the prior fiscal year.

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(G)⁴⁶⁹ a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to ensure subcontractors at all tiers comply with the requirements and goals set forth in the plan established in accordance with subparagraph (D) of this paragraph, including—

(i) the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and

(ii) efforts to identify and award subcontracts to such small business concerns; and

(H)⁴⁷⁰ a representation that the offeror or bidder will—

(i) make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns used in preparing and submitting to the contracting agency the bid or proposal, in the same amount and quality used in preparing and submitting the bid or proposal; and

(ii) provide to the contracting officer a written explanation if the offeror or bidder fails to acquire articles, equipment, supplies, services, or materials or obtain the performance of construction work as described in clause (1).

(7)⁴⁷¹ The head of the contracting agency shall ensure that—

(A) the agency collects and reports data on the extent to which contractors of the agency meet the goals and objectives set forth in subcontracting plans submitted pursuant to this subsection; and

§ 8(d)(8) to
§ 8(d)(11)(D)

(B) the agency periodically reviews data collected and reported pursuant to subparagraph (A) for the purpose of ensuring that such contractors comply in good faith with the requirements of this subsection and subcontracting plans submitted by the contractors pursuant to this subsection.

⁴⁶⁹ Former subparagraph (G) redesignated as (H) and new subparagraph (G) added by § 1614(a)(3) of P.L. 113-66, approved Dec. 26, 2013 (127 Stat. 948).

⁴⁷⁰ New subparagraph 8(d)(6)(G) (now (H)) added by § 1322(3) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2540). Subparagraph (G) redesignated as (H) by § 1614(a)(3) of P.L. 113-66, approved Dec. 26, 2013 (127 Stat. 948).

⁴⁷¹ Paragraphs 8(d)(7) – (12) redesignated as (8) – (13) by § 1653(a)(1) and new paragraph (7) added by § 1653(a)(2) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2082).

(8) The provisions of paragraph (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

(9) MATERIAL BREACH.—The failure of any contractor or subcontractor to comply in good faith with—

Noncompliance is material breach.

(A) the clause contained in paragraph (3) of this subsection,

(B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract, or

(C)⁴⁷² assurances provided under paragraph (6)(E),

shall be a material breach of such contract or subcontract⁴⁷³ and may be considered in any past performance evaluation of the contractor.

(10) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

(11) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

§ 8(d)(11)(C)(ii) to § 8(d)(13)(C)

(C) evaluate compliance with subcontracting plans as a supplement to evaluations performed by the contracting agency,⁴⁷⁴ either on a contract-by-contract basis, or in the case of contractors having multiple contracts, on an aggregate basis.

Subcontracting, compliance evaluation.

⁴⁷² New subparagraph 8(d)(9)(C) added by § 1821(a) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2654).

⁴⁷³ Paragraph 8(d)(8) redesignated as 8(d)(9) by § 1653(a)(1) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2082). Language after the footnote signal added by § 1653(a)(3) of P.L. 112-239.

⁴⁷⁴ Paragraph 8(d)(10) redesignated as 8(d)(11) by § 1653(a)(1) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2082). Phrase “as a supplement to evaluations performed by the contracting agency” added by § 1653(a)(4) of P.L. 112-239.

(12)⁴⁷⁵ For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency pursuant to this subsection, a mentor firm providing development assistance to a protégé firm under the pilot Mentor-Protégé Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101-510; 10 USC 2301 note) shall be granted credit for such assistance in accordance with subsection (g) of such section.

Mentor-Protégé Program. [10 USC 2301 note].

(13)⁴⁷⁶ PAYMENT OF SUBCONTRACTORS.—

(A) DEFINITION.—In this paragraph, the term “covered contract” means a contract relating to which a prime contractor is required to develop a subcontracting plan under paragraph (4) or (5).

“Covered contract.”

(B) NOTICE.—

(i) IN GENERAL.—A prime contractor for a covered contract shall notify in writing the contracting officer for the covered contract if the prime contractor pays a reduced price to a subcontractor for goods and services upon completion of the responsibilities of the subcontractor or the payment to a subcontractor is more than 90 days past due for goods or services provided for the covered contract for which the Federal agency has paid the prime contractor.

(ii) CONTENTS.—A prime contractor shall include the reason for the reduction in a payment to or failure to pay a subcontractor in any notice made under clause (i).

§ 8(d)(13)(D) to § 8(d)(16)(A)(i)

(C) PERFORMANCE.—A contracting officer for a covered contract shall consider the unjustified failure by a prime contractor to make a full or timely payment to a subcontractor in evaluating the performance of the prime contractor.

(D) CONTROL OF FUNDS.—If the contracting officer for a covered contract determines that a prime contractor has a history of unjustified, untimely payments to contractors [sic, should probably read “subcontractors”], the contracting officer shall record the identity of the contractor in accordance with the regulations promulgated under subparagraph (E).

⁴⁷⁵Paragraph 8(d)(11) deleted by § 303(a)(1) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4262). Paragraph 8(d)(12), added by § 814(c) of P.L. 102-190, approved Dec. 5, 1992 (105 Stat. 1425), redesignated as 8(d)(11) by § 303(a)(2) of P.L. 102-564. Text of former 8(d)(11) is set out below:

At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection.

⁴⁷⁶ New paragraph 8(d)(12) added by § 1334 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2542).

(E) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Federal Acquisition Regulatory Council established under section 1302(a) of title 41, United States Code shall amend the Federal Acquisition Regulation issued under section 1303 of title 41 to—

[41 USC 1302(a)]

(i) describe the circumstances under which a contractor may be determined to have a history of unjustified, untimely payments to subcontractors;

(ii) establish a process for contracting officers to record the identity of a contractor described in clause (i); and

(iii) require the identity of a contractor described in clause (i) to be incorporated in, and made publicly available through, the Federal Awardee Performance and Integrity Information System, or any successor thereto.

(14)⁴⁷⁷ An offeror for a covered contract that intends to identify a small business concern as a potential subcontractor in a bid or proposal for the contract, or in a plan submitted pursuant to this subsection in connection with the contract, shall notify the small business concern prior to making such identification.

(15) The Administrator shall establish a reporting mechanism that allows a subcontractor or potential subcontractor to report fraudulent activity or bad faith by a contractor with respect to a subcontracting plan submitted pursuant to this subsection.

(16)⁴⁷⁸ CREDIT FOR CERTAIN SUBCONTRACTORS.—

(A) For purposes of determining whether or not a prime contractor has attained the percentage goals specified in paragraph (6)—

(i) if the subcontracting goals pertain only to a single contract with the executive agency, the prime contractor shall receive credit for small concerns performing as first tier subcontractors or subcontractors at any tier to the subcontracting plans required under paragraph (6)(D) in an amount equal to the dollar value of work awarded to such small business concerns; and

(ii) if the subcontracting goals pertain to more than one contract with one or more executive agencies, or to one contract with more than one executive agency, the prime contractor may only count first tier subcontractors that are small business concerns.

(B) Nothing in this paragraph shall abrogate the responsibility of a prime contractor to make a good-faith effort to achieve the first tier small business subcontracting goals negotiated under paragraph (6)(A), or the requirement for

⁴⁷⁷ New paragraphs 8(d)(14) and (15) added by § 1653(a)(5) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2082)

⁴⁷⁸ New paragraph (16) added by § 1614(a)(4) of P.L. 113-66, approved Dec. 26, 2013 (127 Stat. 949).

subcontractors with further opportunities for subcontracting to make a good-faith effort to achieve the goals established under paragraph (6)(D).

(17)⁴⁷⁹ PILOT PROGRAM PROVIDING PAST PERFORMANCE RATINGS FOR OTHER SMALL BUSINESS SUBCONTRACTORS.—

(A) ESTABLISHMENT.—The Administrator shall establish a pilot program for a small business concern without a past performance rating as a prime contractor performing as a first tier subcontractor for a covered contract (as defined in paragraph 13(A)) to request a past performance rating in the system used by the Federal Government to monitor or record contractor past performance.

(B) APPLICATION.—A small business concern described in subparagraph (A) shall submit an application to the appropriate official for a past performance rating no later than 270 days after the small business concern completed the work for which it seeks a past performance rating or 180 days after the prime contractor completes work on the covered contract, whichever is earlier. Such application shall include written evidence of the past performance factors for which the small business concern seeks a rating and a suggested rating.

(C) DETERMINATION.—The appropriate official shall submit the application from the small business concern to the Office of Small and Disadvantaged Business Utilization for the covered contract and to the prime contractor for review. The Office of Small and Disadvantaged Business Utilization and the prime contractor shall, not later than 30 days after receipt of the application, submit to the appropriate official a response regarding the application.

(i) AGREEMENT ON RATING.—If the Office of Small and Disadvantaged Business Utilization and the prime contractor agree on a past performance rating, or if either the Office of Small and Disadvantaged Business Utilization or the prime contractor fail to respond and the responding person agrees with the rating of the applicant small business concern, the appropriate official shall enter the agreed-upon past performance rating in the system described in subparagraph (A).

§ 8(d)(17)(D) to
§ 8(d)(17)(G)(iii)

(ii) DISAGREEMENT ON RATING.—If the Office of Small and Disadvantaged Business Utilization and the prime contractor fail to respond within 30 days or if they disagree about the rating, or if either the Office of Small and Disadvantaged Business Utilization or the prime contractor fail to respond and the responding person disagrees with the rating of the applicant small business concern, the Office of Small and Disadvantaged Business Utilization or the prime contractor shall submit a notice contesting the application to the appropriate official. The appropriate official shall follow the requirements of subparagraph (D).

⁴⁷⁹ New paragraph 8(d)(17) added by § 1822 of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2654).

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(D) **PROCEDURE FOR RATING.**—Not later than 14 calendar days after receipt of a notice under subparagraph (C)(ii), the appropriate official shall submit such notice to the applicant small business concern. Such concern may submit comments, rebuttals, or additional information relating to the past performance of such concern not later [than] 14 calendar days after receipt of such notice. The appropriate official shall enter into the system described in subparagraph (A) a rating that is neither favorable nor unfavorable along with the initial application from such concern, any responses of the Office of Small and Disadvantaged Business Utilization and the prime contractor, and any additional information provided by such concern. A copy of the information submitted shall be provided to the contracting officer (or designee of such officer) for the covered contract.

(E) **USE OF INFORMATION.**—A small business subcontractor may use a past performance rating given under this paragraph to establish its past performance for a prime contract.

(F) **DURATION.**—The pilot program established under this paragraph shall terminate 3 years after the date on which the first applicant small business concern receives a past performance rating for performance as a first tier subcontractor.

(G) **REPORT.**—The Comptroller General of the United States shall begin an assessment of the pilot program 1 year after the establishment of such program. Not later than 6 months after beginning such assessment, the Comptroller General shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, which shall include—

(i) the number of small business concerns and, set forth separately, the number of small business exporters,⁴⁸⁰ that have received past performance ratings under the pilot program;

(ii) the number of applications, set forth separately by applications from small business concerns and from small business exporters, in which the contracting officer (or designee) or the prime contractor contested the application of the small business concern;

§ 8(d)(17)(G)(iv) to
§ 8(d)(17)(H)(iv)

(iii) any suggestions or recommendations the Comptroller General or the small business concerns participating in the program have to address disputes between the small business concern, the contracting officer (or designee), and the prime contractor on past performance ratings;

(iv) the number of small business concerns awarded prime contracts after receiving a past performance rating under this pilot program; and

⁴⁸⁰ Reference to small business exporters in clauses (i) and (ii) added by § 1706(a)(1) of P.L. 115-91, approved Dec. 12, 2017 (Stat.).

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(v) any suggestions or recommendation the Comptroller General has to improve the operation of the pilot program.

(H)⁴⁸¹ DEFINITIONS.—In this paragraph—

- (i) the term “appropriate official” means—
- (I) a commercial market representative;
- (II) another individual designated by the senior official appointed by the Administrator with responsibilities under sections 8, 15, 31, and 36; or
- (III) the Office of Small and Disadvantaged Business Utilization of a Federal agency, if the head of the Federal agency and the Administrator agree;
- (ii) the term “defense item” has the meaning given that term in section 38(j)(4)(A) of the Arms Export Control Act (22 U.S.C. 2778(j)(4)(A));
- (iii) the term “major non-NATO ally” means a country designated as a major non-NATO ally under section 517 of the Foreign Assistance Act of 1961 (22 U.S.C. 2321k);
- (iv) the term “past performance” includes performance of a contract for a sale of defense items (under section 38 of the Arms Export Control Act (22 U.S.C. 2778)) to the government of a member nation of North Atlantic Treaty Organization, the government of a major non-NATO ally, or the government of a country with which the United States has a defense cooperation agreement (as certified by the Secretary of State), and
- (v) the term “small business exporter” means a small business concern that exports defense items under section 38 of the Arms Export Control Act (22 U.S.C. 2778) to the government of a member nation of the North Atlantic Treaty Organization, the government of a major non-NATO ally, or the government of a country with which the United States has a defense cooperative agreement (as certified by the Secretary of State.
- “Appropriate official.”
- “Defense item.”
- “Major non-NATO ally.”
- “Past performance.”
- § 8(d)(17)(H)(v) to § 8(e)(1)(B)(i)
- “Small business exporter.”

⁴⁸¹ Subparagraph 8(d)(17)(H) rewritten by § 1706(a)(2) of P.L. 115-91, approved Dec. 12, 2017 (Stat.). Text of former subparagraph (H) is reprinted below:

(H) APPROPRIATE OFFICIAL DEFINED.—In this paragraph, the term “appropriate official” means

- (i) a commercial market representative;
- (ii) another individual designated by the senior official appointed by the Administrator with responsibilities under sections 8, 15, 31, and 36; or
- (iii) the Office of Small and Disadvantaged Business Utilization of a Federal agency, if the head of the Federal agency and the Administrator agree.

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(e)⁴⁸² (1) Except as provided in subsection (g)—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed \$25,000;⁴⁸³

(ii) place an order, expected to exceed \$25,000, under a basic agreement, basic ordering agreement, or similar arrangement,⁴⁸⁴

shall furnish for publication by the Secretary of Commerce a notice described in subsection (b) of this section;

(B)⁴⁸⁵ an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f)—

§ 8(e)(1)(B)(ii) to
§ 8(f)(1)

(i) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed \$10,000, but not to exceed \$25,000; and

(ii) in the case of the Department of Defense, if the contract is for a price expected to exceed \$5,000, but not to exceed \$25,000; and

(C) an executive agency awarding a contract for property or services for a price exceeding \$100,000,⁴⁸⁶ or placing an order referred to in clause (A)(ii) exceeding \$100,000, shall furnish for publication by the Secretary of Commerce a notice

⁴⁸²Section 8(e) added by P.L. 98-72, approved Aug. 11, 1983 (97 Stat. 403). Rewritten and subsections (f), (g), (h), (i), and (j) added by § 404(a) of P.L. 98-577, approved Oct. 30, 1984 (98 Stat. 3082). Subsections (e) through (j) effective with respect to any solicitation for bids or proposals issued after March 31, 1985, and apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds, per subsections 404(b) and (c) of P.L. 98-557, *supra*.

⁴⁸³“\$25,000” substituted for “small purchase threshold” by § 4202(d)(1)(A) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3345). Phrase “small purchase threshold” was substituted for “\$25,000” by § 806(e)(2)(B) of P.L. 101-510, approved Nov. 5, 1990 (104 Stat. 1593). For a definition of “small purchase threshold,” see § 3(m) of this Act. The contract value amount was raised from \$10,000 to \$25,000 by § 922(a)(1) of P.L. 99-661, approved Nov. 14, 1986 (100 Stat. 3816). Subsection 8(e)(1)(A)(iii) was also added by § 922(a)(1) of P.L. 99-661.

⁴⁸⁴Subsection 8(e)(1)(A)(iii) deleted by § 806(e)(2)(B)(iv) of P.L. 101-510, approved Nov. 5, 1990 (104 Stat. 1593). Text of former § 8(e)(1)(A)(iii) is reprinted below:

(iii) solicit bids or proposals for a contract for property or services for a price expected to exceed \$10,000, if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors,

⁴⁸⁵Subsection 8(e)(1)(B) was redesignated 8(e)(1)(C) and new subsection 8(e)(1)(B) was added by § 922(a)(3) of P.L. 99-661, approved Nov. 14, 1986 (100 Stat. 3816).

⁴⁸⁶Amount changed from \$25,000 by § 416(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2620).

announcing the award or order if there is likely to be any subcontract under such contract or order.

(2) The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).

(3) Whenever an executive agency is required by paragraph (1)(A) to furnish a notice to the Secretary of Commerce, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published by the Secretary of Commerce; or

(B) in the case of a contract or order estimated to be greater than the simplified acquisition threshold,⁴⁸⁷ establish a deadline for the submission of all bids or proposals in response to the notice required by paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

(f) Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) shall include—

Notice of solicitation, requirements.

(1) an accurate description of the property or services to be contracted for which description (A) shall not be unnecessarily restrictive of competition, and (B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor to make an informed business judgment as to whether a copy of the solicitation should be requested;

§ 8(f)(2) to § 8(g)(1)(A)

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

⁴⁸⁷Introductory phrase was added by § 4202(d)(1)(B) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3345).

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(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(5) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and

(6)⁴⁸⁸ in the case of a contract in an amount estimated to be greater than \$25,000 but not greater than the simplified acquisition threshold—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

Notice not required.

§ 8(g)(1)(A)(i) to § 8(g)(2)

(1) A notice is not required under subsection (e)(1)

(A)⁴⁸⁹ the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Government-wide point of entry; and

⁴⁸⁸Subsection 8(f)(6) added by § 4202(d)(2)(C) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3345).

⁴⁸⁹Subparagraphs (A) and (B) deleted, subparagraphs (C) - (H) renumbered as (B) - (G), respectively, and new subparagraph (A) added by § 850(e) of P.L. 105-85, approved Nov. 18, 1997 (111 Stat. 1848). Former subparagraphs (A) and (B), as added by § 4202(d)(3) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3345), are reprinted below:

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 30A(a)(1) of the Office of Federal Procurement Policy Act or with full FACNET capability certified pursuant to section 30A(a)(2) of such Act;

(B) (i) the proposed procurement is for an amount not greater than \$250,000 and is to be made through a system with full FACNET capability certified pursuant to section 30A(a)(2) of the Office of Federal Procurement Policy Act; and

(ii) a certification has been made pursuant to section 30A(b) of such Act that Government-wide FACNET capability has been implemented.

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(ii) permitting the public to respond to the solicitation electronically.

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 9 of this Act;

(D) the procurement is made against an order placed under a requirements contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G)⁴⁹⁰ the procurement is for the services of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

Expert services.

(2) The requirements of subsection (a)(1)(A) do not apply to any procurement under conditions described in paragraph (2), (3), (4), (5), or (7) of section 3304(a), title 41, United States Code, or paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10, United States Code.

§ 8(g)(3) to § 8(j) 110 USC 2304(c)].

(3) The requirements of subsection (a)(1)(A) shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

(h) (1) An executive agency may not award a contract using procedures other than competitive procedures unless—

Noncompetitive awards.

(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

⁴⁹⁰Subsection 8(g)(1)(H)(now (G)) added by § 1055(b)(2)(C) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3266).

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(i) in the case of a contract for an amount exceeding \$100,000 (but equal to or less than \$1,000,000), by the advocate for competition for the procuring activity (without further delegation);

(ii) in the case of a contract for an amount exceeding \$1,000,000 (but equal to or less than \$10,000,000), by the head of the procuring activity or a delegate who, if a member of the Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS-16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) in the case of a contract for an amount exceeding \$10,000,000, by the senior procurement executive of the agency designated pursuant to section 1702(c), title 41, United States Code (without further delegation); and [41 USC 1702(c)].

(B) all other requirements applicable to the use of such procedures under chapter 31 of title 41, United States Code, or chapter 137 of title 10, United States Code, as appropriate, have been satisfied. [41 USC ch. 31].

(2) The same exceptions as are provided in section 3304(e)(4) of title 41, United States Code, or section 2304(f)(2) of title 10, United States Code, shall apply with respect to the requirements of paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 303(f)(1) of such Act or section 2304(f)(1) of such title, as appropriate. [41 USC 3304(e)(4)]. [10 USC 2304(f)(2)].

(i) An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e). An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such

§ 8(k) to
§ 8(m)(1)

(j) For purposes of this section, the term “executive agency” has the meaning provided such term in section 133 of title 41, United States Code.⁴⁹¹ “Executive agency.” [41 USC 133].

(k)⁴⁹² NOTICES OF SUBCONTRACTING OPPORTUNITIES—

(1) IN GENERAL.—Notices of subcontracting opportunities may be submitted for publication on the appropriate Federal Web site (as determined by the Administrator) by—

(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C); and

⁴⁹¹Section 404(a) of P.L. 98-577, approved Oct. 30, 1984 (98 Stat. 3082).

⁴⁹² New subsection 8(k) added by § 416(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2620). Requirement for publication in the Commerce Business Daily replaced by current language by § 1654 of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2083).

(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of \$10,000.

(2) CONTENT OF NOTICE.—The notice of a subcontracting opportunity shall include—

(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f); and

(B) the due date for receipt of offers.

(l)⁴⁹³ MANAGEMENT ASSISTANCE FOR SMALL BUSINESSES AFFECTED BY MILITARY OPERATIONS.—The Administration shall utilize, as appropriate, its entrepreneurial development and management assistance programs, including programs involving State or private sector partners, to provide business counseling and training to any small business concern adversely affected by the deployment of units of the Armed Forces of the United States in support of a period of military conflict (as defined in section 7(n)(1)).

Management assistance for small businesses affected by military operations.

(m)⁴⁹⁴ PROCUREMENT PROGRAM FOR WOMEN-OWNED SMALL BUSINESS CONCERNS.—

Women-owned § 8(m)(1)(A) to § 8(m)(2)(E)

(1) DEFINITIONS.—In this subsection, the following definitions apply:

(A) CONTRACTING OFFICER.—The term “contracting officer” has the meaning given such term in section 2101(1) of title 41, United States Code.

“Contracting officer.”

(B) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term “small business concern owned and controlled by women” has the meaning given such term in section 3(n), except that ownership shall be determined without regard to any community property law.

“Small business concern owned and controlled by women.”

(2) AUTHORITY TO RESTRICT COMPETITION.—In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

⁴⁹³ Subsection 8(l) added by § 303(a) of P.L. 106-50, approved August 17, 1999 (113 Stat. 243). Section 303 further provides:

(b) ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE.—For the duration of Operation Allied Force and for 120 days thereafter, the Administration shall enhance its publicity of the availability of assistance provided pursuant to the amendment made by this section, including information regarding the appropriate local office at which affected small businesses may seek such assistance.

(c) GUIDELINES.—Not later than 30 days after the date of the enactment of this section, the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section and the amendment made by this section.

⁴⁹⁴ Subsection 8(m) added by § 811 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

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(A) each of the concerns is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that 2 or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

(D)⁴⁹⁵ in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price; and

§ 8(m)(3) to
§ 8(m)(7)

(E)⁴⁹⁶ each of the concerns is certified by a Federal agency, a State government, the Administrator, or a national certifying entity approved by the Administrator as a small business concern owned and controlled by women.

(3) WAIVER.—With respect to a small business concern owned and controlled by women, the Administrator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

(4) IDENTIFICATION OF INDUSTRIES.—The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

(5) ENFORCEMENT; PENALTIES.—

(A) VERIFICATION OF ELIGIBILITY.—In carrying out this subsection, the Administrator shall establish procedures relating to—

⁴⁹⁵ Subparagraph 8(m)(2)(D) deleted and subparagraphs (E) and (F) redesignated as (D) and (E) by § 1697(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2091). Text of former 8(m)(2)(D) is reprinted below:

- (D) the anticipated award price of the contract (including options) does not exceed—
- (i) \$5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or
 - (ii) \$3,000,000, in the case of all other contracts;

⁴⁹⁶ Paragraph 8(m)(2)(E) was rewritten by § 825(a)(1) of P.L. 113-291, approved Dec. 19, 2014 (Stat.). Text of former paragraph (2)(E) is reprinted below:

- (E) each of the concerns—
- (i) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or
 - (ii) certifies to the contracting officer that it is a small business concern owned and controlled by women and provides adequate documentation, in accordance with standards established by the Administration, to support such certification.

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(i) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under paragraph (2)(E)); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(F).

(B) EXAMINATIONS.—The procedures established under subparagraph (A) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under paragraph (2)(F).

(C) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

- | | | |
|------|---|--------------------|
| (i) | section 1001 of title 18, United States Code; and | [18 USC 1001] |
| (ii) | sections 3729 through 3733 of title 31, United States Code; | [31 USC 3729-3733] |

(6) PROVISION OF DATA.—Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection

§ 8(m)(7)(A) to
§ 8(m)(8)(B)(ii)

(7)⁴⁹⁷ AUTHORITY FOR SOLE SOURCE CONTRACTS FOR ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN.—A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women described in paragraph (2)(A) and certified under paragraph (2)(E) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses described in paragraph (2)(A) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) \$6,500,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

⁴⁹⁷ New paragraph 8(m)(7) added by § 825(a)(3) of P.L. 113-291, approved Dec. 19, 2014 (128 Stat. 3437).

opportunity; and (ii) \$4,000,000, in the case of any other contract

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(8)⁴⁹⁸ AUTHORITY FOR SOLE SOURCE CONTRACTS FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN IN SUBSTANTIALLY UNDERREPRESENTED INDUSTRIES.—A contracting officer may award a sole source contract under this subsection to any small business concern owned and controlled by women certified under paragraph (2)(E) that is in an industry in which small business concerns owned and controlled by women are substantially underrepresented (as determined by the Administrator under paragraph (3)) if—

(A) such concern is determined to be a responsible contractor with respect to performance of the contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more businesses in an industry that has received a waiver under paragraph (3) will submit offers;

(B) the anticipated award price of the contract (including options) will not exceed—

(i) \$6,500,000, in the case of a contract opportunity and a standard industrial classification code for manufacturing; or

§ 8(m)(8)(C) to § 9(a)

(ii) \$4,000,000, in the case of any other contract opportunity; and

(C) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(n)⁴⁹⁹ BUSINESSLINC GRANTS AND COOPERATIVE AGREEMENTS.—

BusinessLINC grants.

(1) IN GENERAL.—In accordance with this subsection, the Administrator may make grants to enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses; and

⁴⁹⁸ New paragraph 8(m)(8) added by § 825(a)(3) of P.L. 113-291, approved Dec. 19, 2014 (128 Stat. 3437).

⁴⁹⁹ Subsection 8(n) added by § 102 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

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(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protégé programs or community-based, statewide, or local business development programs.

(2) MATCHING REQUIREMENT.—Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection \$6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.

Authorization of appropriations.

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§ 9.⁵⁰⁰ (a) Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

Research and development.
15 USC 638.

Policy of Congress.

⁵⁰⁰Section 306 of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249), provides:

- (a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that an entity that is awarded a funding agreement under the SBIR program of a Federal agency under section 9 of the Small Business Act should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible in keeping with the overall purposes of that program.
- (b) NOTICE TO SBIR AWARDDEES.—Each Federal agency that awards funding agreements under the SBIR program shall provide to each recipient of such an award a notice describing the sense of the Congress, as set forth in subsection (a).

Section 5124 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1837) provides:

SEC. 5124. INTERAGENCY POLICY COMMITTEE.

- (a) ESTABLISHMENT.—The Director of the Office of Science and Technology Policy shall establish an Interagency SBIR/STTR Policy Committee.
- (b) MEMBERSHIP.—The Interagency SBIR/STTR Policy Committee shall include representatives from Federal agencies with an SBIR or an STTR program and the Small Business Administration.
- (c) DUTIES.—The Interagency SBIR/STTR Policy Committee shall review the following issues and make policy recommendations on ways to improve program effectiveness and efficiency:
- (1) The public and Government databases described in section 9(k) of the Small Business Act (15 U.S.C. 638(k)).
 - (2) Federal agency flexibility in establishing Phase I and II award sizes, including appropriate criteria for exercising such flexibility.
 - (3) Commercialization assistance best practices of Federal agencies with significant potential to be employed by other agencies and the appropriate steps to achieve that leverage, as well as proposals for new initiatives to address funding gaps that business concerns face after Phase II but before commercialization.
 - (4) Developing and incorporating a standard evaluation framework to enable systematic assessment of SBIR and STTR, including through improved tracking of awards and outcomes and development of performance measures for the SBIR program and STTR program of each Federal agency.
 - (5) Outreach and technical assistance activities that increase the participation of small businesses underrepresented in the SBIR and STTR programs, including the identification and sharing of best practices and the leveraging of resources in support of such activities across agencies.
- (d) REPORTS.—The Interagency SBIR/STTR Policy Committee shall transmit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives and to the Committee on Small Business and Entrepreneurship of the Senate—
- (1) a report on its review and recommendations under subsection (c)(1) not later than 1 year after the date of enactment of this Act;
 - (2) a report on its review and recommendations under subsection (c)(2) not later than 18 months after the date of enactment of this Act;
 - (3) a report on its review and recommendations under subsection (c)(3) not later than 2 years after the date of enactment of this Act;
 - (4) a report on its review and recommendations under subsection (c)(4) not later than 2 years after the date of enactment of this Act; and

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(b) It shall be the duty of the Administration, and it is hereby empowered—

(1) to assist small-business concerns to obtain Government contracts for research and development;

Assistance in obtaining R & D contracts.

(2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense;

§ 9(b)(5) to
§ 9(b)(7)(E)

(3) to provide technical assistance to small-business concerns to publish the purposes of this section; and

Provide technical assistance.

(4)⁵⁰¹ to develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency small business innovation research programs and small business technology transfer programs;

(5) to coordinate with participating agencies a schedule for release of SBIR and STTR solicitations, and to prepare a master release schedule so as to maximize small businesses' opportunities to respond to solicitations;

(6) to independently survey and monitor the operation of SBIR and STTR programs within participating Federal agencies;

(7) to report not less than annually to the Committee on Small Business of the Senate and the Committee on Science⁵⁰² and the Committee on Small Business of the House of Representatives, on the SBIR and STTR programs of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR and STTR programs, including—

Reports

(A)⁵⁰³ the data on output and outcomes collected pursuant to subsections (g)(8) and (o)(9);

(5) a report on its review and recommendations under subsection (c)(5) not later than 2 years after the date of enactment of this Act.

⁵⁰¹Subsections 9(b)(4) - 9(b)(7) added by § 3 of P.L. 97-219, Small Business Innovation Development Act of 1982, approved July 22, 1982 (96 Stat. 217). These subsections were to be repealed Oct. 1, 1988, per § 5 of P.L. 97-219, but were extended to Oct. 1, 1993, by § 2 of P.L. 99-443, approved Oct. 6, 1986 (100 Stat. 1120). Reference to small business technology transfer pilot programs and to STTR added by § 202(a) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). The designation “pilot” was removed by § 2(b) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 263).

⁵⁰² Reference to the Committee on Science added by § 104 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁵⁰³ The language beginning with “including” was added by § 107(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). This language was put into subparagraph (A) and new subparagraphs (B) – (G) added by § 5131(1) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1844).

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(B) the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns and firms with venture capital, hedge fund, or private equity firm investment (including those majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms) under each of the SBIR and STTR programs;

(C) a description of the extent to which each Federal agency is increasing outreach and awards to firms owned and controlled by women or by socially or economically disadvantaged individuals under each of the SBIR and STTR programs;

Agency outreach.

(D) general information about the implementation of, and compliance with the allocation of funds required under, subsection (dd) for firms owned in majority part by venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program;

§ 9(b)(7)(F) to § 9(d)(1)(F)

(E) a detailed description of appeals of Phase III awards and notices of noncompliance with the SBIR Policy Directive and the STTR Policy Directive filed by the Administrator with Federal agencies;

(F) an accounting of funds, initiatives, and outcomes under the Commercialization Readiness Program; and

(G) a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k);

(8)⁵⁰⁴ to provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and

(9)⁵⁰⁵ to coordinate the implementation of electronic databases at each of the Federal agencies participating in the SBIR program or the STTR program, including the technical ability of the participating agencies to electronically share data.

(c) The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section.

(d) (1) The Administrator is authorized to consult with representatives of small-business concerns with a view to assisting and encouraging such firms to undertake joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose. Such joint programs may, among other things, include the following purposes:

⁵⁰⁴ New paragraph 9(b)(8) added by § 252(b)(1) of P.L. 109-163 , approved Jan. 6, 2006 (119 Stat. 3179).

⁵⁰⁵ New paragraph 9(b)(9) added by § 5131(3) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1845).

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- (A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;
- (B) to undertake and utilize applied research;
- (C) to collect research information related to a particular industry and disseminate it to participating members;
- (D) to conduct applied research on a protected, proprietary, and contractual basis with member or nonmember firms, Government agencies, and others;
- (E) to prosecute applications for patents and render patent services for participating members; and
- (F) to negotiate and grant licenses under patents held under the § 9(d)(2) to § 9(e)(2) program, and to establish corporations designed to exploit particular patents obtained by it.

(2) The Administrator may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between small-business firms providing for a joint program of research and development, if the Administrator finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Administrator or the Attorney General may at any time withdraw his approval of the agreement and the joint program of research and development covered thereby, if he finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this subsection, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this subsection on the Administrator shall not be delegated by him.

(3) No act or omission to act pursuant to and within the scope of any joint program for research and development, under an agreement approved by the Administrator under this subsection, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this subsection, either by the Administrator or by the Attorney General, the provisions of this subsection shall not apply to any subsequent act or omission to act by reason of such agreement or approval.

(e)⁵⁰⁶ For the purpose of this section—

⁵⁰⁶Subsections 9(e) - 9(k) added by § 4 of P.L. 97-219, Small Business Innovation Development Act of 1982, approved July 22, 1982 (96 Stat. 218). These subsections were to be repealed Oct. 1, 1988, per § 5 of P.L. 97-219. Congressional findings and purposes that were included in § 2 of P.L. 97-219 are reprinted at page 989 of this Handbook. Program extended to Oct. 1, 1993, by § 2 of P.L. 99-443, approved Oct. 6, 1986 (100 Stat. 1120).

SMALL BUSINESS ACT

(1) the term “extramural budget” means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government- operated facilities, except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs⁵⁰⁷, and except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries; “Extramural budget.”

(2) the term “Federal agency” means an executive agency as defined in section 105 of title 5, United States Code, or a military department as defined in section 102 of such title, except that it does not include any agency within the Intelligence Community (as the term is defined in section 3.4(f) of Executive Order 12333 or its successor orders); “Federal agency” § 9(e)(3) to § 9(e)(4)(B)(iii) 1021.

(3) the term “funding agreement” means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government; “Funding agreement.”

(4) the term “Small Business Innovation Research Program” or “SBIR” means a program under which a portion of a Federal agency's research or research and development effort is reserved for award to small business concerns through a uniform process having— “Small Business Innovation Research Program.” “SBIR.”

(A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential, as described in subparagraph (B),⁵⁰⁸ submitted pursuant to SBIR program solicitations;

⁵⁰⁷Department of Defense exception added by § 1 of P.L. 99-443, approved Oct. 6, 1986 (100 Stat. 1120); it was deleted by § 103(c) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). That section also inserted the provision for the Department of Energy.

⁵⁰⁸The phrase “that appear to have commercial potential” and reference to subparagraph (B)(ii) added by § 103(a)(1) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). The reference to (B)(ii) was changed to (B) by § 501(b)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2621).

(B)⁵⁰⁹ a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II⁵¹⁰, that will further develop proposals which meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposals, as evidenced by the first phase, considering, among other things, the proposal's commercial potential, as evidenced by—

Phase II.

(i) the small business concern's record of successfully commercializing SBIR or other research;

(ii) the existence of second phase funding commitments from private sector or non-SBIR funding sources;

§ 9(e)(4)(B)(iv) to
§ 9(e)(6)(B)

(iii) the existence of third phase, follow-on commitments for the subject of the research; and

(iv) the presence of other indicators of the commercial potential of the idea; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the SBIR program⁵¹¹—

Phase III.

(i) in which commercial applications of SBIR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards; or

(ii) for which awards from non-SBIR Federal funding sources are used for the continuation of research or research and development that has been

⁵⁰⁹Subparagraphs (B) and (C) rewritten by § 103(a)(2) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Text of former subparagraphs (B) and (C) reprinted below:

(B) a second phase to further develop the proposed ideas to meet the particular program needs, the awarding of which shall take into consideration the scientific and technical merit and feasibility evidenced by the first phase and, where two or more proposals are evaluated as being of approximately equal scientific and technical merit and feasibility, special consideration shall be given to those proposals that have demonstrated third phase, non-Federal capital commitments; and

(C) where appropriate, a third phase in which non-Federal capital pursues commercial applications of the research or research and development and which may also involve follow-on non-SBIR funded production contracts with a Federal agency for products or processes intended for use by the United States Government; and

⁵¹⁰ Language beginning with “which shall not” added by § 5105(1) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1826).

⁵¹¹ Language after “phase” added by § 5125(a)(1) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1838).

competitively selected using peer review or merit-based selection procedures⁵¹² scientific review criteria;

(5) the term “research” or “research and development” means any activity which is (A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied; (B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or (C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements;

“Research.”
“Research and development.”

(6)⁵¹³ the term “Small Business Technology Transfer Program” or “STTR” means a program⁵¹⁴ under which a portion of a Federal agency’s extramural research or research and development effort is reserved for award to small business concerns for cooperative research and development through a uniform process having—

“Small Business Technology Transfer Program.”
“STTR”

(A) a first phase, to determine, to the extent possible, the scientific, technical, and commercial merit and feasibility of ideas submitted pursuant to STTR program solicitations;

§ 9(e)(6)(C) to § 9(e)(10)(A)

(B) a second phase, which shall not include any invitation, pre-screening, or pre-selection process for eligibility for Phase II, that will further develop proposals that⁵¹⁵ meet particular program needs, in which awards shall be made based on the scientific, technical, and commercial merit and feasibility of the idea, as evidenced by the first phase and by other relevant information; and

(C) where appropriate, a third phase for work that derives from, extends, or completes efforts made under prior funding agreements under the STTR program⁵¹⁶—

(i) in which commercial applications of STTR-funded research or research and development are funded by non-Federal sources of capital or, for products or services intended for use by the Federal Government, by follow-on non-STTR Federal funding awards; and

(ii) for which awards from non-STTR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria;

⁵¹² “[S]cientific review criteria” replaced with “merit-based selection procedures” by § 5125 (b)(1)(A) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1839).

⁵¹³ Paragraphs 9(e)(6), (7), and (8) added by § 202(b) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

⁵¹⁴ The designation “pilot” was removed by § 2(b) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 263).

⁵¹⁵ Language beginning with “which shall” added by § 5105(2) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1826).

⁵¹⁶ Language after “phase” added by § 5125(a)(2) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1838).

(7) the term “cooperative research and development” means research or research and development conducted jointly by a small business concern and a research institution in which not less than 40 percent of the work is performed by the small business concern, and not less than 30 percent of the work is performed by the research institution;

“Cooperative research and development.”

(8) the term “research institution” means a nonprofit institution, as defined in section 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980, and includes federally funded research and development centers, as identified by the National Scientific Foundation in accordance with the governmentwide Federal Acquisition Regulation issued in accordance with section 25(c)(1) of the Office of Federal Procurement Policy Act (or any successor regulation thereto);

“Research institution.”
[15 USC 3703(5)].

(9)⁵¹⁷ the term “commercial applications” shall not be construed to exclude testing and evaluation of products, services, or technologies for use in technical or weapons systems, and further, awards for testing and evaluation of products, services, or technologies for use in technical or weapons systems may be made in either Phase II or Phase III of the Small Business Innovation Research Program and of the Small Business Technology Transfer Program, as defined in this subsection;

“Commercial applications.”

(10)⁵¹⁸ the term “commercialization” means—

“Commercialization.”

§ 9(e)(10)(B) to
§ 9(f)

(A) the process of developing products, processes, technologies, or services; and

(B) the production and delivery (whether by the originating party or by others) of products, processes, technologies, or services for sale to or use by the Federal Government or commercial markets.

(11)⁵¹⁹ the term “Phase I” means—

“Phase I.”

(A) with respect to the SBIR program, the first phase described in paragraph (4)(A); and

(B) with respect to the STTR program, the first phase described in paragraph (6)(A);

(12) the term “Phase II” means—

“Phase II.”

(A) with respect to the SBIR program, the second phase described in paragraph (4)(B); and

⁵¹⁷ New paragraph 9(e)(9) added by § 252(c) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3179).

⁵¹⁸ New paragraph 9(e)(10) added by § 5125(a)(5) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1839).

⁵¹⁹ New paragraphs 9(e)(11) - (13) added by § 5125(b)(1)(C) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1839).

(B) with respect to the STTR program, the second phase described in paragraph (6)(B); and

(13) the term “Phase III” means— “Phase III.”

(A) with respect to the SBIR program, the third phase described in paragraph (4)(C); and

(B) with respect to the STTR program, the third phase described in paragraph (6)(C); § 9(f)(1) to § 9(f)(1)(I)

(f)⁵²⁰ FEDERAL AGENCY EXPENDITURES FOR THE SBIR PROGRAM.—

(1) REQUIRED EXPENDITURE AMOUNTS.—Except as provided in paragraph (2)(B),⁵²¹ each Federal agency which has an extramural budget for research or research and development in excess of \$100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns— Research or R & D budget.

(A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;

⁵²⁰Section 9(f) rewritten by § 103(b) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Former § 9(f) is reprinted below:

(1) Each Federal agency which has an extramural budget for research or research and development in excess of \$100,000,000 for fiscal year 1982, or any fiscal year thereafter, shall expend not less than 0.2 per centum of its extramural budget in fiscal year 1983 or in such subsequent fiscal year as the agency has such budget, not less than 0.6 per centum of such budget in the second fiscal year thereafter, not less than 1 per centum of such budget in the third fiscal year thereafter, and not less than 1.25 per centum of such budget in all subsequent fiscal years with small business concerns specifically in connection with a small business innovation research program which meets the requirements of the Small Business Innovation Development Act of 1982 and regulations issued thereunder: Provided, That any Federal agency which has an extramural budget for research or research and development in excess of \$10,000,000,000 for fiscal year 1982 shall expend not less than 0.1 per centum of its extramural budget in fiscal year 1983, not less than 0.3 per centum of such budget in the second fiscal year thereafter, not less than 0.5 per centum of such budget in the third fiscal year thereafter, not less than 1 per centum of such budget in the fourth fiscal year thereafter, and not less than 1.25 per centum of such budget in all subsequent fiscal years with small business concerns specifically in connection with a small business innovation research program which meets the requirements of the Small Business Innovation Development Act of 1982 and regulations issued thereunder: Provided further, That a Federal agency shall not make available for the purpose of meeting the requirements of this subsection an amount of its extramural budget for basic research or research and development which exceeds the percentages specified herein. Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than under a small business innovation research program shall not be counted as meeting any portion of the percentage requirements of this subsection.

(2) Amounts appropriated for atomic energy defense programs of the Department of Energy shall for the purposes of paragraph (1) be excluded from the amount of the research or research and development budget of that Department.

⁵²¹ Reference to paragraph (2)(B) added by § 5102(a)(1)(A) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1824).

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- 1995 and 1996;
- (B) not less than 2.0 percent of such budget in each of fiscal years
- 1997 through 2011;
- (C)⁵²² not less than 2.5 percent of such budget in each of fiscal years
- (D) not less than 2.6 percent of such budget in fiscal year 2012;
- (E) not less than 2.7 percent of such budget in fiscal year 2013;
- (F) not less than 2.8 percent of such budget in fiscal year 2014;
- (G) not less than 2.9 percent of such budget in fiscal year 2015;
- (H) not less than 3.0 percent of such budget in fiscal year 2016; and
- (I) not less than 3.2 percent of such budget in fiscal year 2017 and each fiscal year thereafter,

⁵²²Paragraph (C) rewritten and new paragraphs (D) through (I) added by § 5102(a)(1)(C) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1824). Text of former paragraph (C) is: “not less than 2.5 percent of such budget in each fiscal year thereafter, specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.” Section 106 of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249) provides:

Not later than March 31, 1996, the Secretary of Defense shall submit a recommendation to the Congress addressing whether there has been a demonstrable reduction in the quality of research performed under the SBIR program since the beginning of fiscal year 1993, such that increasing the percentage under section 9(f)(1)(C) of the Small Business Act would adversely affect the performance of the research programs of the Department of Defense.

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(2) LIMITATIONS.—A Federal agency shall not⁵²³ make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentages specified in paragraph (1). Limitations.

(3) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an SBIR program shall not be considered to meet any portion of the percentage requirements of paragraph (1). Exclusion of certain funding agreements.

(4)⁵²⁴ RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to prohibit a Federal agency from expending with small business concerns an amount of the extramural budget for research or research and development of the agency that exceeds the amount required under paragraph (1). Rule of construction.

(g) Each Federal agency required by subsection (f) to establish a small business innovation research program shall, in accordance with this Act and regulations issued hereunder—

(1) unilaterally determine categories of projects to be in its SBIR program;

(2) issue small business innovation research solicitations in accordance with a schedule determined cooperatively with the Small Business Administration;

⁵²³ Paragraph 9(f)(2) rewritten to delete subparagraph (A) by § 5141(b)(1) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1853). Text of former paragraph (A) is reprinted below:

(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

Section 5141(b)(2) of P.L. 112-81 provides:

TRANSITIONAL RULE.—Notwithstanding the amendments made by paragraph (1), subsections (f)(2) and (y)(4) of section 9 of the Small Business Act (15 U.S.C. 638), as in effect on the day before the date of enactment of this Act, shall continue to apply to each Federal agency until the effective date of the performance criteria established by the Administrator under subsection (mm)(3) of section 9 of the Small Business Act, as added by subsection (a).

Section 5141(b)(3) provides:

PROSPECTIVE REPEAL.—Effective on the first day of the fourth full fiscal year following the date of enactment of this Act, section 9 of the Small Business Act (15 U.S.C. 638), as amended by paragraph (1) of this section, is amended—

(A)—in subsection (f)(2), by striking “shall not make available for the purpose” and inserting the following: “shall not—

(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

(B) make available for the purpose”

⁵²⁴ New paragraph 9(f)(4) added by § 5102(a)(2) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1824).

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(3)⁵²⁵ unilaterally determine research topics within the agency's SBIR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified by—

Critical technologies.

(A) the National Critical Technologies Panel (or its successor) in the 1991 report required under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976, and in subsequent reports issued under that authority; or

[42 USC 6615].

(B) the Secretary of Defense, in the 1992 report issued in accordance with section 2522 of title 10, United States Code, and in subsequent reports issued under that authority;

[10 USC 2522].

(4) (A) unilaterally receive and evaluate proposals resulting from SBIR proposals; and

(B)⁵²⁶ make a final decision on each proposal submitted under the SBIR program—

(i) not later than 1 year after the date on which the applicable solicitation closes, if with respect to the National Institutes of Health or the National Science Foundation, or 90 days after the date on which the applicable solicitation closes, if with respect to any other participating agency; or

(ii) if the Administrator authorizes an extension with respect to a solicitation, not later than 90 days after the date that would otherwise be applicable to the agency under clause (i);

(5)⁵²⁷ subject to subsection (l), unilaterally select awardees for its SBIR funding agreements and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;

(6) administer its own SBIR funding agreements (or delegate such administration to another agency);

(7) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements⁵²⁸ and, in all cases,

⁵²⁵Paragraphs 9(g)(3) - (7) redesignated as (4) - (8) and new paragraph 9(g)(3) added by § 103(d) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

⁵²⁶ New subparagraph 9(g)(4)(B) added by § 5126(a) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1841).

⁵²⁷Reference to subsection 9(l) added by § 103(h)(2) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). The phrase from “inform” to the semicolon added by § 103(i) of P.L. 102-564.

⁵²⁸The last clause in this paragraph was added by § 103(e) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements;

(8)⁵²⁹ collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k), including—

(A) whether an awardee—

(i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment that the awardee has received as of the date of the award; and

(II) the amount of additional capital that the awardee has invested in the SBIR technology;

(ii) has an investor that—

(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investigator;[sic; should probably read “investor”]

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator; [sic; should probably read “investor”]

(v) is a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 [20 USC 1001] (20 U.S.C. 1001); or

(vi) is located in a State described in subsection (u)(3);

⁵²⁹ Existing paragraph 9(g)(8) renumbered as 9(g)(9) and new paragraph 9(g)(8) added by § 5132 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1845).

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(B) a justification statement from the agency, if an awardee receives an award in an amount that is more than the award guidelines under this section; and

(C) data with respect to the Federal and State Technology Partnership Program (FAST Program);

(9)⁵³⁰ make an annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;

(10)⁵³¹ include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, United States Code, a section on its SBIR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives; [31 USC 1115].

(11)⁵³² provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and

(12)⁵³³ provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the SBIR program of the Federal agency.

(h) In addition to the requirements of subsection (f), each Federal agency which has a budget for research or research and development in excess of \$20,000,000 for any fiscal year beginning with fiscal year 1983 or subsequent fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns, and no goal established under this subsection shall be less than the percentage of the agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year. Agency goals for funding agreements.

(i)⁵³⁴ ANNUAL REPORTING.— Report to SBA.

⁵³⁰ New paragraph 9(g)(9) added by § 106(3) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Paragraph 9(g)(9) renumbered as 9(g)(10) by § 5132 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1845).

⁵³¹ New paragraph 9(g)(10) added by § 107(a) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Paragraph (10) deleted and new paragraph 9(g)(10) added by § 5132 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1845). Text of former paragraph (10) is reprinted below:

(10) collect, and maintain in a common format in accordance with subsection (v), such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k)

⁵³² New paragraph 9(g)(11) added by § 252(b)(2) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3179).

⁵³³ New paragraph 9(g)(12) added by § 5110(a) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1833).

⁵³⁴ Subsection 9(i) was reorganized and new paragraph (2) was added by § 109 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

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(1) IN GENERAL.—Each Federal agency required by this section to have an SBIR program or to establish goals shall report annually to the Small Business Administration the number of awards (including awards under subsection (y))⁵³⁵ pursuant to grants, contracts, or cooperative agreements over \$10,000 in amount and the dollar value of all such awards, identifying SBIR awards and comparing the number and amount of such awards with awards to other than small business concerns.

(2) CALCULATION OF EXTRAMURAL BUDGET.—

(A) METHODOLOGY.—Not later than 4 months after the date of enactment of each appropriations Act for a Federal agency required by this section to have an SBIR program, the Federal agency shall submit to the Administrator a report, which shall include a description of the methodology used for calculating the amount of the extramural budget of that Federal agency.

(B) ADMINISTRATOR'S ANALYSIS.—The Administrator shall include an analysis of the methodology received from each Federal agency referred to in subparagraph (A) in the report required by subsection (b)(7).

⁵³⁵ Parenthetical added by § 5122(b) of P.L. 112-81, approved Dec. 31, 2011 125(Stat. 1836).

(j)⁵³⁶ (1)⁵³⁷ POLICY DIRECTIVES.—The Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall, within one hundred and twenty days of the enactment of the Small Business Innovation Development Act of 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for—

SBIR
policy
directives.

- (A) simplified, standardized, and timely SBIR solicitations;

⁵³⁶ Section 5151 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1857) provides:

SEC. 5151. CONFORMING AMENDMENTS TO THE SBIR AND STTR POLICY DIRECTIVES.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator shall promulgate amendments to the SBIR Policy Directive and the STTR Policy Directive to conform such directives to this title and the amendments made by this title.

(b) PUBLISHING SBIR POLICY DIRECTIVE AND THE STTR POLICY DIRECTIVE IN THE FEDERAL REGISTER.—Not later than 180 days after the date of enactment of this Act, the Administrator shall publish the amended SBIR Policy Directive and the amended STTR Policy Directive in the Federal Register.

⁵³⁷Section 9(j) was rewritten by § 103(e) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). That section renumbered subparagraphs 9(j)(2)(A) - (H) as clauses (i) - (vii), redesignated paragraphs 9(j)(1) - (7) as subparagraphs (A) - (G), added the title in new paragraph 9(j)(1) and added new paragraph 9(j)(2). Section 5143 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1854) provides:

SEC. 5143. REDUCING VULNERABILITY OF SBIR AND STTR PROGRAMS TO FRAUD, WASTE, AND ABUSE.

(a) FRAUD, WASTE, AND ABUSE PREVENTION.—

(1) AMENDMENTS REQUIRED FOR FRAUD, WASTE, AND ABUSE PREVENTION.—Not later than 90 days after the date of enactment of this Act, the Administrator shall amend the SBIR Policy Directive and the STTR Policy Directive to include measures to prevent fraud, waste, and abuse in the SBIR program and the STTR program.

(2) CONTENT OF AMENDMENTS.—The amendments required under paragraph (1) shall include—

(A) definitions or descriptions of fraud, waste, and abuse;

(B) guidelines for the monitoring and oversight of applicants to and recipients of awards under the SBIR program or the STTR program;

(C) a requirement that each Federal agency that participates in the SBIR program or STTR program include information concerning the method established by the Inspector General of the Federal agency to report fraud, waste, and abuse (including any telephone hotline or Web-based platform)—

(i) on the Web site of the Federal agency; and

(ii) in any solicitation or notice of funding opportunity issued by the Federal agency for the SBIR program or the STTR program; and

(D) a requirement that each applicant for and small business concern that receives funding under the SBIR program or the STTR program shall certify whether the applicant or small business concern is in compliance with the laws relating to the SBIR program and the STTR program and the conduct guidelines established under the SBIR Policy Directive and the STTR Policy Directive.

(3) CONSULTATION.—The Administrator shall develop, in consultation with the Council of Inspectors General on Integrity and Efficiency, the procedures and requirements for the certification set forth under paragraph (2)(D) after providing notice of and an opportunity for public comment on such procedures and requirements.

(4) CERTIFICATION.—The certification developed under paragraph (3) may—

(A) cover the lifecycle of an award to require certifications at the application, funding, reporting, and closeout phases of every SBIR and STTR award;

(B) require the small business concern to certify compliance with the “principal investigator primary employment” requirement, the “small business concern” definition requirement, and the “performance of work” requirements as set

- (B) a simplified, standardized funding process which provides for
- (i) the timely receipt and review of proposals;
 - (ii) outside peer review for at least Phase II proposals, if appropriate;
 - (iii) protection of proprietary information provided in proposals;

forth in the Directive applicable to the award;

(C) require the small business concern to disclose whether it has applied for, plans to apply for, or received an SBIR or STTR award for identical or essentially equivalent work (as defined under the SBIR Policy Directive and the STTR Policy Directive), and require the concern to certify that the award that it is applying for or obtaining funding for is not identical or essentially equivalent to work it has performed, or will perform, in connection with any other SBIR or STTR award that the concern has applied for or received from any other agency except as fully disclosed to all funding agencies; and

(D) require that the small business concern certify that it will or did perform the work on the award at its facilities with its employees, unless otherwise indicated.

(5) INSPECTORS GENERAL.—The Inspector General of each Federal agency that participates in the SBIR program or STTR program shall cooperate to prevent fraud, waste, and abuse in the SBIR program and the STTR program by—

(A) establishing fraud detection indicators;

(B) reviewing regulations and operating procedures of the Federal agency;

(C) coordinating information sharing between Federal agencies, to the extent otherwise permitted under Federal law; and

(D) improving the education and training of and outreach to—

(i) administrators of the SBIR program and the STTR program of the Federal agency;

(ii) applicants to the SBIR program or the STTR program; and

(iii) recipients of awards under the SBIR program or the STTR program.

(b) STUDY AND REPORT.—Not later than 1 year after the date of enactment of this Act to establish a baseline of changes made to the program to fight fraud, waste, and abuse, and every 4 years thereafter to evaluate the effectiveness of the agency strategies, the Comptroller General of the United States shall—

(1) conduct a study that evaluates—

(A) the implementation by each Federal agency that participates in the SBIR program or the STTR program of the amendments to the SBIR Policy Directive and the STTR Policy Directive made pursuant to subsection (a);

(B) the effectiveness of the management information system of each Federal agency that participates in the SBIR program or STTR program in identifying duplicative SBIR and STTR projects;

(C) the effectiveness of the risk management strategies of each Federal agency that participates in the SBIR program or STTR program in identifying areas of the SBIR program or the STTR program that are at high risk for fraud;

(D) technological tools that may be used to detect patterns of behavior that may indicate fraud by applicants to the SBIR program or the STTR program;

(E) the success of each Federal agency that participates in the SBIR program or STTR program in reducing fraud, waste, and abuse in the SBIR program or the STTR program of the Federal agency;

(F) the extent to which the Inspector General of each Federal agency that participates in the SBIR and STTR program effectively conducts investigations, audits, inspections, and outreach relating to the SBIR and STTR programs of the Federal agency; and

(G) the effectiveness of the Government and public databases described in section 9(k) of the Small Business Act (15 U.S.C. 638(k)) in reducing vulnerabilities of the SBIR program and the STTR program to fraud, waste, and abuse, particularly with respect to Federal agencies funding duplicative proposals and business concerns falsifying information in proposals; and

(2) submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, and the head of

SMALL BUSINESS ACT

- (iv) selection of awardees;
- (v) retention of rights in data generated in the performance of the contract by the small business concern;
- (vi) transfer of title to property provided by the agency to the small business concern if such a transfer would be more cost effective than recovery of the property by the agency;
- (vii) cost sharing; and
- (viii) cost principles and payment schedules;
- (C) exemptions from the regulations under paragraph (2) if national security or intelligence functions clearly would be jeopardized;
- (D) minimizing regulatory burden associated with participation in the SBIR program for the small business concern which will stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR program;
- (E) simplified, standardized, and timely annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;
- (F)⁵³⁸ standardized and orderly withdrawal from program participation by an agency having a SBIR program; at the discretion of the Administration, such directives may require a phased withdrawal over a period of time sufficient in duration to minimize any adverse impact on small business concerns; and
- (G) the voluntary participation in a SBIR program by a Federal agency not required to establish such a program pursuant to subsection (f).

§ 9(j)(1)(C) to
§ 9(j)(2)(D)

each Federal agency that participates in the SBIR program or STTR program a report on the results of the study conducted under paragraph (1).

(c) INSPECTOR GENERAL REPORTS.—Not later than October 1 of each year, the Inspector General of each Federal agency that participates in the SBIR program or STTR program shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives a report describing—

(1) the number of cases referred to the Inspector General in the preceding year that related to fraud, waste, or abuse with respect to the SBIR program or STTR program;

(2) the actions taken in each case described in paragraph (1) if fraud, waste, or abuse was determined to have occurred;

(3) if no action was taken in a case described in paragraph (1) and fraud, waste, or abuse was determined to have occurred, the justification for action not being taken; and

(4) an accounting of the funds used to address fraud, waste, and abuse, including a description of personnel and resources funded and funds that were recovered or saved.

⁵³⁸Subsections 9(j)(6) and (7) were added (and conforming changes made to subsections 4 and 5) by § 108 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2994).

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(2) MODIFICATIONS.—Not later than 90 days after the enactment of the Small Business Research and Development Enhancement Act of 1992, the Administrator shall modify the policy directives issued pursuant to this subsection to provide for—

(A) retention by a small business concern of the rights to data generated by the concern in the performance of an SBIR award for a period of not less than 4 years;

(B) continued use by a small business concern participating in Phase III of the SBIR program, as a directed bailment, of any property transferred by a Federal agency to the small business concern in Phase II of an SBIR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in Phase III of such program;

(C) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an SBIR program enters into follow-on non-SBIR funding agreements with the small business concern for such research, development, or production;

§ 9(j)(2)(E) to
§ 9(j)(3)(A)

(D) an increase to \$150,000⁵³⁹ in Phase I of an SBIR program, and to \$1,000,000 in Phase II of an SBIR program, and an adjustment of such amounts every year for inflation;

(E) a process for notifying the participating SBIR agencies and potential SBIR participants of the 1991, 1992, and the current critical technologies, as identified—

(i) by the National Critical Technologies Panel (or its successor), in accordance with section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976; or

(ii) by the Secretary of Defense, in accordance with section 2522 of title 10, United States Code;

(F) enhanced outreach efforts to increase the participation of socially and economically disadvantaged small business concerns, as defined in section 8(a) (4), and the participation of small businesses that are 51 percent owned and controlled by women in technological innovation and in SBIR programs, including Phase III of such programs, and the collection of data to document such participation;

(G) technical and programmatic guidance to encourage agencies to develop gap-funding programs to address the delay between an award for Phase I of an SBIR program and the application for and extension of an award for Phase II of such program;

⁵³⁹ “\$100,000” changed to “\$150,000” and “\$750,000” changed to “\$1,000,000” by § 5103(a) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1825). Section 5103(c)(1) of P.L. 112-81 changed the adjustment requirement to annual rather than every 5 years. Former language: “once every 5 years to reflect economic adjustments and programmatic considerations”.

(H) procedures to ensure that a small business concern that submits a proposal for a funding agreement for Phase I of an SBIR program and that has received more than 15 Phase II SBIR awards during the preceding 5 fiscal years is able to demonstrate the extent to which it was able to secure Phase III funding to develop concepts resulting from previous Phase II SBIR awards; and

(I) procedures to ensure that agencies participating in the SBIR program retain the information submitted under subparagraph (H) at least until the Government Accountability Office submits the report required under section 105 of the Small Business Research and Development Enhancement Act of 1992.

(3)⁵⁴⁰ ADDITIONAL MODIFICATIONS.—Not later than 120 days after the date of enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator shall modify the policy directives issued pursuant to this subsection—

(A) to clarify that the rights provided for under paragraph (2)(A) apply to all Federal funding awards under this section, including Phase I, Phase II, and Phase III; § 9(j)(3)(B) to
§ 9(k)(1)(A)

(B) to provide for the requirement of a succinct commercialization plan with each application for a Phase II award that is moving toward commercialization;

(C) to require agencies to report to the Administration, not less frequently than annually, all instances in which an agency pursued research, development, or production of a technology developed by a small business concern using an award made under the SBIR program of that agency, and determined that it was not practicable to enter into a follow-on non-SBIR program funding agreement with the small business concern, which report shall include, at a minimum—

(i) the reasons why the follow-on funding agreement with the small business concern was not practicable;

(ii) the identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) a description of the type of funding agreement under which the research, development, or production was obtained; and

(D) to implement subsection (v), including establishing standardized procedures for the provision of information pursuant to subsection (k)(3).

(k)⁵⁴¹ DATABASE.—

⁵⁴⁰ New paragraph 9(j)(3) added by § 110 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁵⁴¹A new subsection 9(k) was added by § 107(c) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2663A-670). The previous subsection 9(k) was deleted by sec. 103(g) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4253). Text of former sec. 9(k) is reprinted:

(1) PUBLIC DATABASE.—Not later than 180 days after the date of enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator shall develop, maintain, and make available to the public a searchable, up-to-date electronic database that includes—

Public
database

§ 9(k)(1)(B) to
§ 9(k)(1)(F)(i)

(A) the name, size, location, and an identifying number assigned by the Administrator, of each small business concern that has received a Phase I or Phase II SBIR or STTR⁵⁴² award from a Federal agency;

(B) a description of each Phase I or Phase II SBIR or STTR award received by that small business concern, including—

(i) an abstract of the project funded by the award, excluding any proprietary information so identified by the small business concern;

(ii) the Federal agency making the award; and

(iii) the date and amount of the award;

(C) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made;

(D) information regarding mentors and Mentoring Networks, as required by section 35(d);

(E)⁵⁴³ with respect to assistance under the STTR program only—

(i) whether the small business concern or the research institution initiated their collaboration on each assisted STTR project;

The Director of the Office of Science and Technology Policy, in consultation with the Federal Coordinating Council for Science, Engineering and Research, shall, in addition to such other responsibilities imposed upon him by the Small Business Innovation Development Act of 1982—

(1) independently survey and monitor all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, including compliance with the expenditures of funds according to the requirements of subsection (f) of this section; and

(2) report not less than annually, and at such other times as the Director may deem appropriate, to the Committees on Small Business of the Senate and the House of Representatives on all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, together with such recommendations as the Director may deem appropriate.

⁵⁴² References to STTR throughout paragraph 9(k)(1) added by § 6(b)(1)(A) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 265).

⁵⁴³ New subparagraph 9(k)(1)(E) added by § 6(b)(1)(D) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 265).

(ii) whether the small business concern or the research institution originated any technology relating to the assisted STTR project;

(iii) the length of time it took to negotiate any licensing agreement between the small business concern and the research institution under each assisted STTR project; and

(iv) how the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project were allocated (by percentage) between the small business concern and the research institution; and

(F)⁵⁴⁴ for each small business concern that has received a Phase I or Phase II SBIR or STTR award from a Federal agency, whether the small business concern—

(i) has venture capital, hedge fund, or private equity investment and, if so, whether the small business concern is registered as majority-owned multiple venture capital operating companies, hedge funds, or private equity firms as required under subsection (dd)(3);

(ii) is owned by a woman or has a woman as a principal investigator [sic, should probably be “investor”];

(iii) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator [sic, should probably be “investor”];

(iv) is owned by a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); or [20 USC 1001]

(v) received assistance under the Federal and State Technology Partnership Program (FAST Program).

(2) GOVERNMENT DATABASE.—Not later than 90 days after the date of enactment of the SBIR/STTR Reauthorization Act of 2011,⁵⁴⁵ the Administrator, in consultation with Federal agencies required to have an SBIR program pursuant to subsection (f)(1) or an STTR program pursuant to subsection (n)(1)⁵⁴⁶, shall develop and maintain a database to be used exclusively for SBIR and STTR program evaluation that—

Government database.

⁵⁴⁴ New subparagraph 9(k)(1)(F) added by § 5134 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1847).

⁵⁴⁵ Current language added by § 5135(1)(A) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1847). Previous language read: “Not later than 180 days after the date of enactment of the Small Business Innovation Research Program Reauthorization Act of 2000”.

⁵⁴⁶ References to STTR in paragraph (2) added by § 6(b)(2) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 265).

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(A)⁵⁴⁷ contains for each small business concern that applies for, submits a proposal for, or receives an award under Phase I or Phase II of the SBIR program or the STTR program—

- (i) the name, size, and location of, and the identifying number assigned by the Administration to, the small business concern;
- (ii) an abstract of the applicable project;
- (iii) the specific aims of the project;
- (iv) the number of employees of the small business concern;
- (v) the names and titles of the key individuals that will carry out the project, the position each key individual holds in the small business concern, and contact information for each key individual;
- (vi) the percentage of effort each individual described in clause (v) will contribute to the project;
- (vii) whether the small business concern is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and
- (viii) the Federal agency to which the application is made and contact information for the person or office within the Federal agency that is responsible for reviewing applications and making awards under the SBIR program or the STTR program;

(B)⁵⁴⁸ contains for each Phase II award made by a Federal agency—

- (i) information collected in accordance with paragraph (3) on revenue from the sale of new products or services resulting from the research conducted under the award;
- (ii) information collected in accordance with paragraph (3) on additional investment from any source, other than Phase I or Phase II SBIR or STTR awards, to further the research and development conducted under the award; and
- (iii) any other information received in connection with the award that the Administrator, in conjunction with the SBIR and STTR program managers of Federal agencies, considers relevant and appropriate;

⁵⁴⁷ Text of subparagraph 9(k)(2)(A) renumbered as (B) by § 5135(1)(C) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1847).

⁵⁴⁸ Text of subparagraph 9(k)(2)(B) renumbered as (C) by § 5135(1)(C) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1847).

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(C)⁵⁴⁹ includes any narrative information that a small business concern receiving a second phase award voluntarily submits to further describe the outputs and outcomes of its awards;

(D)⁵⁵⁰ includes, for each awardee—

(i) the name, size, and location of, and any identifying number assigned by the Administrator to, the awardee; § 9(k)(2)(D)(ii)(I) to § 9(k)(2)(G)

(ii) whether the awardee has venture capital, hedge fund, or private equity firm investment and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment as of the date of the award;

(II) the percentage of ownership of the awardee held by a venture capital operating company, hedge fund, or private equity firm, including whether the awardee is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms; and

(III) the amount of additional capital that the awardee has invested in the SBIR or STTR technology, which information shall be collected on an annual basis;

(iii) the names and locations of any affiliates of the awardee;

(iv) the number of employees of the awardee;

(v) the number of employees of the affiliates of the awardee; and

(vi) the names of, and the percentage of ownership of the awardee held by—

(I) any individual who is not a citizen of the United States or a lawful permanent resident of the United States; or

(II) any person that is not an individual and is not organized under the laws of a State or the United States;

⁵⁴⁹ Subparagraph 9(k)(2)(C) deleted by § 5135(1)(B) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1847). Section 5135(1)(C) of that law renumbered subparagraph (B) as (C). Text of former subparagraph (C) is reprinted below:

- (C) includes for each applicant for a Phase I or Phase II award that does not receive such an award—
- (i) the name, size, and location, and an identifying number assigned by the Administration;
 - (ii) an abstract of the project; and
 - (iii) the Federal agency to which the application was made

⁵⁵⁰ New subparagraph 9(k)(2)(D) added by § 5135(1)(F) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1848).

(E)⁵⁵¹ includes any other data collected by or available to any Federal agency that such agency considers may be useful for SBIR or STTR program evaluation;

(F) is available for use solely for program evaluation purposes by the Federal Government or, in accordance with policy directives issued by the Administration, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database; and

§ 9(k)(2)(G)(i) to
§ 9(l)

(G)⁵⁵² includes a timely and accurate list of any individual or small business concern that has participated in the SBIR program or STTR program that has been

(i) convicted of a fraud-related crime involving funding received under the SBIR program or STTR program; or

(ii) found civilly liable for a fraud-related violation involving funding received under the SBIR program or STTR program.

(3) UPDATING INFORMATION FOR DATABASE.—

(A) IN GENERAL.—A small business concern applying for a Phase II award under this section shall be required to update information in the database established under this subsection for any prior Phase II award received by that small business concern. In complying with this paragraph, a small business concern may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(B) ANNUAL UPDATES UPON TERMINATION.—A small business concern receiving a Phase II award under this section shall—

(i) update information in the database concerning that award at the termination of the award period; and

(ii) be requested to voluntarily update such information annually thereafter for a period of 5 years.

(C)⁵⁵³ GOVERNMENT DATABASE.—Not later than 60 days after the date established by a Federal agency for submitting applications or proposals for a Phase I or Phase II award under the SBIR program or STTR program, the head of the Federal

⁵⁵¹ Subparagraphs 9(k)(2)(D) and (E) renumbered as (E) and (F) by § 5135(1)(E) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1848).

⁵⁵² New subparagraph 9(k)(2)(G) added by § 5135(1)(I) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1848).

⁵⁵³ New subparagraph 9(k)(3)(C) added by § 5135(2) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1849).

agency shall submit to the Administrator the data required under paragraph (2) with respect to each small business concern that applies or submits a proposal for the Phase I or Phase II award.

(4) PROTECTION OF INFORMATION.—Information provided under paragraph (2) shall be considered privileged and confidential and not subject to disclosure pursuant to section 552 of title 5, United States Code.

(5) RULE OF CONSTRUCTION.—Inclusion of information in the database under this subsection shall not be considered to be publication for purposes of subsection (a) or (b) of section 102 of title 35, United States Code. [35 USC 102].

(1)⁵⁵⁴ REPORTING OF AWARDS MADE FROM SINGLE PROPOSAL, TO MULTIPLE AWARD WINNERS, OR TO CRITICAL TECHNOLOGY TOPICS— § 9(l)(1) to Ref § 9(n) awards.

(1) SINGLE PROPOSAL.—If a Federal agency required to establish an SBIR program under subsection (f) makes an award with respect to an SBIR solicitation topic or subtopic for which the agency received only 1 proposal, the agency shall provide written justification for making the award in its next quarterly report to the Administration and in the agency's next annual report required under subsection (g)(8).

(2) MULTIPLE AWARDS.—An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) an accounting of the awards the agency has made for Phase I of an SBIR program during the reporting period to entities that have received more than 15 awards for Phase II of an SBIR program during the preceding 5 fiscal years.

(3) CRITICAL TECHNOLOGY AWARDS.—An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) an accounting of the number of awards it has made to critical technology topics, as defined in subsection (g)(3), including an identification of the specific critical technologies topics, and the percentage by number and dollar amount of the agency's total SBIR awards to such critical technology topics.

(m)⁵⁵⁵ TERMINATION.—The authorization to carry out the Small Business Innovation Research Program under this section shall terminate on September 30, 2022. Sunset.

⁵⁵⁴Subsection 9(l) added by § 103(h) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249).

⁵⁵⁵Subsection 9(m) added by § 104(b) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Section 104(a) of P.L. 102-564 repealed section 5 of the Small Business Innovation Development Act of 1982 (PL 97-219). Date was changed from October 1, 2000, by § 103 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Subsection 9(m) was rewritten to add paragraph (2) by § 847(a) of P.L. 111-84, approved Oct. 28, 2009 (123 Stat. 2420). Date was changed from 2008 to 2011 and paragraph (2) was repealed by § 3(a) of P.L. 112-17, approved June 1, 2011 (125 Stat. 221). Text of former 9(m)(2) is reprinted below:

(2) EXCEPTION FOR DEPARTMENT OF DEFENSE.—The Secretary of Defense and the Secretary of each military department is authorized to carry out the Small Business Innovation Research Program of the Department of Defense until September 30, 2010.

(n)⁵⁵⁶ REQUIRED EXPENDITURES FOR STTR BY FEDERAL AGENCIES.—
(1) REQUIRED EXPENDITURE AMOUNTS.—

(A)⁵⁵⁷ IN GENERAL.—With respect to each fiscal year through fiscal year 2022, each Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

(B) EXPENDITURE AMOUNTS.—The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be—

Section 847(c) provides: “The amendments made by this section shall take effect as of July 30, 2009.”.

Sunset date changed from 2011 to 2017 by § 5101(a) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1824). Sunset date changed from 2017 to 2022 by § 1834(a) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2661).

⁵⁵⁶Subsections 9(n) - (p) added by § 202(c) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Paragraph 9(n)(1) was rewritten by § 501(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2620). Text of former paragraph 9(n)(1) is reprinted below:

(1) REQUIRED EXPENDITURE AMOUNTS.—Each Federal agency which has an extramural budget for research or research and development in excess of \$1,000,000,000 in fiscal year 1994, 1995, or 1996, is authorized to expend with small business concerns—
(A) not less than 0.05 percent of such budget in fiscal year 1994;
(B) not less than 0.1 percent of such budget in fiscal year 1995; and
(C) not less than 0.15 percent of such budget in fiscal years 1996 and 1997,
specifically in connection with STTR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

⁵⁵⁷ Paragraph 9(n)(1) was rewritten by § 2(a) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 263). Text of former § 9(n)(1) is reprinted below:

With respect to fiscal years 1998, 1999, 2000, and 2001, each Federal agency that has an extramural budget for research, or research and development, in excess of \$1,000,000,000 for that fiscal year, is authorized to expend with small business concerns not less than 0.15 percent of that extramural budget specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

Clause (ii), providing an exception for the Department of Defense was added by § 847(b) of P.L. 111-84, approved Oct. 28, 2009 (123 Stat. 2420). Section 847(c) provides: “The amendments made by this section shall take effect as of July 30, 2009.”. Date was changed from 2009 to 2011 and clause (ii) was repealed by § 3(b) of P.L. 112-17, approved June 1, 2011 (125 Stat. 221). Text of repealed clause (ii) is reprinted below:

(ii) DEPARTMENT OF DEFENSE.—The Secretary of Defense and the Secretary of each military department shall carry out clause (i) with respect to each fiscal year through fiscal year 2010.

Sunset date changed from 2011 to 2017 by § 5101(b) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1824). Sunset date changed from 2017 to 2022 by § 1834(b) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2662).

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- 2003;
- (i) 0.15 percent for each fiscal year through fiscal year
 - (ii)⁵⁵⁸ 0.3 percent for each of fiscal years 2004 through 2011;
 - (iii) 0.35 percent for each of fiscal years 2012 and 2013;
 - (iv) 0.40 percent for each of fiscal years 2014 and 2015; and
 - (v) 0.45 percent for fiscal year 2016 and each fiscal year thereafter.
- § 9(n)(2)(A) to
§ 9(o)(4)(B)

(2) LIMITATIONS.—A Federal agency shall not—

(A) use any of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 25(c)(1) of the Office of Federal Procurement Policy Act); or

Limitations.

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

(3) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

Exclusion of certain funding agreements.

(o) FEDERAL AGENCY STTR AUTHORITY.—Each Federal agency required to establish an STTR program in accordance with subsection (n) and regulations issued under this Act, shall—

(1) unilaterally determine categories of projects to be included in its STTR program;

(2) issue STTR solicitations in accordance with a schedule determined cooperatively with the Administration;

(3) unilaterally determine research topics within the agency's STTR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified—

⁵⁵⁸ Clause 9(n)(1)(B)(ii) rewritten and new clauses (iii) through (v) added by § 5102(b)(2) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1824). Text of former clause (ii) is: “0.3 percent for fiscal year 2004 and each fiscal year thereafter.”

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(A) by the National Critical Technologies Panel (or its successor) in reports required under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976; or [42 USC 6615].

(B) by the Secretary of Defense, in accordance with section 2522 of title 10, United States Code; [10 USC 2522].

(4) (A) unilaterally receive and evaluate proposals resulting from STTR solicitations; and § 9(o)(4)(B)(i) to § 9(o)(9)(A)(i)
(B)⁵⁵⁹ make a final decision on each proposal submitted under the STTR program—

(i) not later than 1 year after the date on which the applicable solicitation closes, if with respect to the National Institutes of Health or the National Science Foundation, or 90 days after the date on which the applicable solicitation closes, if with respect to any other participating agency; or

(ii) if the Administrator authorizes an extension for a solicitation, not later than 90 days after the date that would be applicable to the agency under clause (i);

(5) unilaterally select awardees for its STTR funding agreements and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;

(6) administer its own STTR funding agreements (or delegate such administration to another agency);

(7) make payments to recipients of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of the completion of such requirements;

(8)⁵⁶⁰ include, as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31, United States Code, a section on its STTR program, and shall submit such section to the Committee on Small Business of the Senate, and the Committee on Science and the Committee on Small Business of the House of Representatives; [31 USC 1115]

⁵⁵⁹ New subparagraph 9(o)(4)(B) added by § 5126(a)(2) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1841)

⁵⁶⁰ Paragraphs 9(o)(8) through (11) renumbered 9(o)(10) through (13), respectively, and new paragraphs (8) and (9) added by § 501(b) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2621).

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(9)⁵⁶¹ collect annually, and maintain in a common format in accordance with the simplified reporting requirements under subsection (v), such information from applicants and awardees as is necessary to assess the STTR program outputs and outcomes, including information necessary to maintain the database described in subsection (k), including—

(A) whether an applicant or awardee—

(i) has venture capital, hedge fund, or private equity firm investment or is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and, if so—

(I) the amount of venture capital, hedge fund, or private equity firm investment that the applicant or awardee has received as of the date of the application or award, as applicable; and

(II) the amount of additional capital that the applicant or awardee has invested in the STTR technology;

(ii) has an investor that—

(I) is an individual who is not a citizen of the United States or a lawful permanent resident of the United States and, if so, the name of any such individual; or

(II) is a person that is not an individual and is not organized under the laws of a State or the United States and, if so, the name of any such person;

(iii) is owned by a woman or has a woman as a principal investigator; [sic; should probably read “investor”]

(iv) is owned by a socially or economically disadvantaged individual or has a socially or economically disadvantaged individual as a principal investigator; [sic; should probably read “investor”]

(v) is a faculty member or a student of an institution of higher education, as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001); or

(vi) is located in a State in which the total value of contracts awarded to small business concerns under all STTR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by

⁵⁶¹ Paragraph 9)(o)(9) rewritten by § 5133 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1846). Text of former paragraph 9)(o)(9): “collect such data from awardees as is necessary to assess STTR program outputs and outcomes;”.

the Administrator in biennial fiscal years, beginning with fiscal year 2008, based on the most recent statistics compiled by the Administrator;

(B) if an awardee receives an award in an amount that is more than the award guidelines under this section, a statement from the agency that justifies the award amount; and

(C) data with respect to the Federal and State Technology Partnership Program (FAST Program);

§ 9(o)(12) to § 9(o)(15) (10) submit an annual report on the STTR program to the Administration Office of Science and Technology Policy;

(11)⁵⁶² adopt the agreement developed by the Administrator under subsection (w) as the agency's model agreement for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(12) develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that federally funded research and development centers (as defined in subsection (e)(8)) that participate in STTR agreements—

(A) are free from organizational conflicts of interests relative to the STTR program;

(B) do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(C) use outside peer review, as appropriate; and

(13) not later than July 31, 1993, develop procedures for assessing the commercial merit and feasibility of STTR proposals, as evidenced by—

(A) the small business concern's record of successfully commercializing STTR or other research;

(B) the existence of Phase II funding commitments from private sector or non-STTR funding sources;

(C) the existence of Phase III follow-on commitments for the subject of the research; and

⁵⁶² First phrase of paragraph 9(o)(11) rewritten by § 7(b) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 265). The phrase formerly read: “develop a model agreement not later than July 31, 1993, to be approved by the Administration.”

(D) the presence of other indicators of the commercial potential of the idea.

(14)⁵⁶³ implement an outreach program to research institutions and small business concerns for the purpose of enhancing its STTR program, in conjunction with any such outreach done for purposes of the SBIR program;

§ 9(o)(16) to § 9(p)(2)(B)(i)

(15)⁵⁶⁴ provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing); and

(16)⁵⁶⁵ provide timely notice to the Administrator of any case or controversy before any Federal judicial or administrative tribunal concerning the STTR program of the Federal agency.

(p)⁵⁶⁶ STTR POLICY DIRECTIVE.—

STTR policy directive.

(1) ISSUANCE.—The Administrator shall issue a policy directive for the general conduct of the STTR programs within the Federal Government. Such policy directive shall be issued after consultation with—

(A) the heads of each of the Federal agencies required by subsection (n) to establish an STTR program;

⁵⁶³ New paragraph 9(o)(14) added by § 4 of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 264).

⁵⁶⁴ New paragraph 9(o)(15) added by § 6(a) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 264). Paragraph (15) deleted by § 5110(b)(1) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1833). Text of former paragraph is reprinted below:

(15) collect, and maintain in a common format in accordance with subsection (v), such information from awardees as is necessary to assess the STTR program, including information necessary to maintain the database described in subsection (k)

⁵⁶⁵ New paragraph 9(o)(16) added by § 252(b)(3) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3179). Paragraph (16) redesignated as (15) by § 5110(b)(3) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1833). New paragraph (16) added by § 5110(b)(4) of P.L. 112-81.

⁵⁶⁶Section 202(d) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249), provides:

The policy directive required by section 9(p) shall be published—

- (1) in proposed form (with an opportunity for public comment of not less than 30 days), not later than April 30, 1993; and
- (2) in final form, not later than July 31, 1993.

Section 5151 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1857) provides:

SEC. 5151. CONFORMING AMENDMENTS TO THE SBIR AND STTR POLICY DIRECTIVES.

(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Administrator shall promulgate amendments to the SBIR Policy Directive and the STTR Policy Directive to conform such directives to this title and the amendments made by this title.

(b) PUBLISHING SBIR POLICY DIRECTIVE AND THE SBIR POLICY DIRECTIVE IN THE FEDERAL REGISTER.—Not later than 180 days after the date of enactment of this Act, the Administrator shall publish the amended SBIR Policy Directive and the amended STTR Policy Directive in the Federal Register.

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(B)³³⁴ the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; and

(C) the Director of the Office of Federal Procurement Policy.

(2) CONTENTS.—The policy directive required by paragraph (1) shall provide for—

(A) simplified, standardized, and timely STTR solicitations;

(B) a simplified, standardized funding process that provides for—

(i) the timely receipt and review of proposals;

(ii) outside peer review, if appropriate;

proposals;

(iii) protection of proprietary information provided in

(iv) selection of awardees;

(v) retention by a small business concern of the rights to data generated by the concern in the performance of an STTR award for a period of not less than 4 years;

(vi) continued use by a small business concern, as a directed bailment, of any property transferred by a Federal agency to the small business concern in Phase II of the STTR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in Phase III of such program;

(vii) cost sharing;

(viii) cost principles and payment schedules; and

(ix) 1-year awards for Phase I of an STTR program, generally not to exceed \$150,000⁵⁶⁷ and 2-year awards for Phase II of an STTR program, generally not to exceed \$1,000,000, (each of which the Administrator shall adjust for inflation annually) greater or lesser amounts to be awarded at the discretion of the awarding agency, and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project⁵⁶⁸;

³³⁴ Changed from “the Commissioner of Patents and Trademarks” by § 4732(b)(5) of P.L. 106-113, approved Nov. 29, 1999 (113 Stat. 1501).

⁵⁶⁷ “\$100,000” changed to “\$150,000” and “\$750,000” changed to “\$1,000,000” by § 5103(b) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1825). Parenthetical added by § 5103(c)(2) of P.L. 112-81.

⁵⁶⁸ Amount changed from \$500,000 to \$750,000 by § 3(a)(1) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 263). Section 3(a)(2) of that law added the phrase regarding shorter or longer periods of time. Section 3(b) of the same law provided that these changes shall be effective beginning in fiscal year 2004.

(C) minimizing regulatory burdens associated with participation in STTR programs;

(D) guidelines for a model agreement, to be used by all agencies, for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(E) procedures to ensure that—

(i) a recipient of an STTR award is a small business concern, as defined in section 3 and the regulations promulgated thereunder; and

(ii) such small business concern exercises management and control of the performance of the STTR funding agreement pursuant to a business plan providing for the commercialization of the technology that is the subject matter of the award; and

(F) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an STTR program enters into follow-on, non-STTR funding agreements with the small business concern for such research, development, or production.

(3)⁵⁶⁹ MODIFICATIONS.—Not later than 120 days after the date of enactment of this paragraph, the Administrator shall modify the policy directive issued pursuant to this subsection to clarify that the rights provided for under paragraph (2)(B)(v) apply to all Federal funding awards under this section, including Phase I, Phase II, and Phase III.

(q)⁵⁷⁰ DISCRETIONARY TECHNICAL AND BUSINESS ASSISTANCE.—

Discretionary technical assistance.

(1) IN GENERAL.—Each Federal agency required by this section to conduct an SBIR program or STTR program⁵⁷¹ may enter into an agreement with 1 or more

⁵⁶⁹ New paragraph 9(p)(3) added by § 5 of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 264).

⁵⁷⁰ Subsection 9(q) added by § 301(a) of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Heading amended to include phrase “AND BUSINESS” by § 854(c)(1) of P.L. 115-232, approved August 13, 2018 (Stat.). Section 854(c)(2) of P.L. 115-232 provides:

- (2) REVIEW.—Not later than the end of fiscal year 2019, the Administrator of the Small Business Administration shall—
 - (A) conduct a survey of vendors providing technical or business assistance under section 9(q) of the Small Business Act (15 U.S.C. 638(q)), as amended by paragraph (1), and small business concerns receiving the technical or business assistance; and
 - (B) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report reviewing the efficacy of the provision of the technical or business assistance.

⁵⁷¹ References to STTR in paragraph (1) added by § 5121(1) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1834).

vendors selected under paragraph (2)(A) to provide small business concerns engaged in SBIR or STTR projects with technical and business⁵⁷² assistance services, such as access to a network of scientists and engineers engaged in a wide range of technologies, assistance with product sales, intellectual property protections, market research, market validation, and development of regulatory plans and manufacturing plans,⁵⁷³ or access to technical and business literature available through on-line data bases, for the purpose of assisting such concerns in—

- (A) making better technical decisions concerning such projects;
- (B) solving technical problems which arise during the conduct of such projects;
- (C) minimizing technical risks associated with such projects; and
- (D) developing and commercializing new commercial products and processes resulting from such projects, including intellectual property protections⁵⁷⁴.

(2)⁵⁷⁵ **VENDOR SELECTION.**—

(A) **IN GENERAL.**—Each agency may select 1 or more vendors from which small business concerns may obtain assistance in meeting the goals listed in paragraph (1) for a term not to exceed 5⁵⁷⁶ years. Such selection shall be competitive and shall utilize merit-based criteria.

(B)⁵⁷⁷ **SELECTION BY SMALL BUSINESS CONCERN.**—A small business concern may, by contract or otherwise, select 1 or more vendors to assist the small business concern in meeting the goals listed in paragraph (1).

(3) **ADDITIONAL TECHNICAL ASSISTANCE.**—

⁵⁷² Phrase “and business” added by § 854(c)(1)(B)(i)(II) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁷³ Language after “technologies,” added by § 854(c)(1)(B)(i)(III) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁷⁴ Language regarding intellectual property protections added by § 854(c)(1)(B)(ii) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁷⁵ Subsection 9(q)(2) rewritten by § 607 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4204). Text of former § 9(q)(2) is reprinted below:

Annually, each agency may select a vendor for purposes of this subsection using competitive, merit-based criteria, to assist small business concerns to meet the goals listed in paragraph (1).

⁵⁷⁶ Term changed from 3 years to 5 years by § 5121(2) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1834).

⁵⁷⁷ Subparagraph 9(q)(2)(B) added by § 854(c)(1)(C)(ii) of P.L. 115-232, approved August 13, 2018 (Stat.).

(A)⁵⁷⁸ PHASE I.—A Federal agency described in paragraph (1) may

—
(i) provide to the recipient of a Phase I SBIR or STTR award, through a vendor selected under paragraph (2)(A), the services described in paragraph (1), in an amount equal to not more than \$6,500⁵⁷⁹ per year; or

(ii) authorize the recipient of a Phase I SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than \$6,500 per year, which shall be in addition to the amount of the recipient’s award.

§ 9(q)(3)(A)(ii) to
§ 9(q)(3)(D)

(B)⁵⁸⁰ PHASE II.—A Federal agency described in paragraph (1) may

—
(i) provide to the recipient of a Phase II SBIR or STTR award, through a vendor selected under paragraph (2)(A), the services described in paragraph (1), in an amount equal to not more than \$50,000⁵⁸¹ per year; or

(ii) authorize the recipient of a Phase II SBIR or STTR award to purchase the services described in paragraph (1), in an amount equal to not more than \$50,000 per year, which may, as determined appropriate by the head of the Federal agency, be included as part of the recipient’s award or be in addition to the amount of the recipient’s award⁵⁸².

(C)⁵⁸³ FLEXIBILITY.—In carrying out subparagraphs (A) and (B), each Federal agency shall provide the allowable amounts to a recipient that meets the eligibility requirements under the applicable subparagraph, if the recipient requests to seek technical or business assistance from an individual or entity other than a vendor selected

⁵⁷⁸ Subparagraph 9(q)(3)(A) rewritten by § 5121(3)(A) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1834). Text of former subparagraph (A) is reprinted below:

(A) FIRST PHASE.—Each agency referred to in paragraph (1) may provide services described in paragraph (1) to first phase SBIR award recipients in an amount equal to not more than \$4,000, which shall be in addition to the amount of the recipient's award.

⁵⁷⁹ Amount changed from \$5,000 to \$6,500 by § 854(c)(1)(D)(ii) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁸⁰ Subparagraph 9(q)(3)(B) rewritten by § 5121(3)(B) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1834). Text of former subparagraph (B) is reprinted below:

(B) SECOND PHASE.—Each agency referred to in paragraph (1) may authorize any second phase SBIR award recipient to purchase, with funds available from their SBIR awards, services described in paragraph (1), in an amount equal to not more than \$4,000 per year.

⁵⁸¹ Amount changed from \$5,000 to \$50,000 by § 854(c)(1)(D)(iii)(I) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁸² Phrase “which shall be in addition to the amount of the recipient’s award” replaced with current language by § 854(c)(1)(D)(iii)(II) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁸³ New subparagraphs 9(q)(3)(C) and (D) added by § 5121(3)(C) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1835).

under paragraph (2)(A) by the Federal agency. Business-related services aimed at improving the commercialization success of a small business concern may be obtained from an entity, such as a public or private organization or an agency of or other entity established or funded by a State that facilitates or accelerates the commercialization of technologies or assists in the § 9(q)(3)(D)(i) to § 9(r)(1) and growth of private enterprises that are commercializing technology.⁵⁸⁴

(D) LIMITATION.—A Federal agency may not—

(i) use the amounts authorized under subparagraph (A) or (B) unless 1 or more vendors selected under paragraph (2)(A) provides the technical or business assistance to the recipient; or

(ii) enter a contract with a vendor under paragraph (2)(A) under which the amount provided for technical or business assistance is based on total number of Phase I or Phase II awards.

(E)⁵⁸⁵ MULTIPLE AWARD RECIPIENTS.—The Administrator shall establish a limit on the amount of technical and business assistance services that may be received or purchased under subparagraph (B) by a small business concern that has received multiple Phase II SBIR or STTR awards for a fiscal year.

(4)⁵⁸⁶ ANNUAL REPORTING.—

(A) IN GENERAL.—A small business concern that receives technical or business assistance from a vendor under this subsection during a fiscal year shall submit to the Federal agency contracting with the vendor a description of the technical or business assistance provided and the benefits and results of the technical or business assistance provided.

(B) USE OF EXISTING REPORTING MECHANISM.—The information required under subparagraph (A) shall be collected by a Federal agency as part of a report required to be submitted by small business concerns engaged in SBIR or STTR projects of the Federal agency for which the requirement was in effect on the date of enactment of this paragraph.

(r)⁵⁸⁷ PHASE III AGREEMENTS, COMPETITIVE PROCEDURES AND JUSTIFICATION FOR AWARDS.—

⁵⁸⁴ Last sentence added by § 854(c)(1)(D)(iv)(III) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁸⁵ New subparagraph 9(q)(3)(E) added by § 854(c)(1)(D)(vi) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁸⁶ New paragraph 9(q)(4) added by § 854(c)(1)(E) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁵⁸⁷ Subsection 9(r) added by § 305 of P.L. 102-564, approved Oct. 28, 1992 (106 Stat. 4249). Heading changed from “THIRD PHASE” to “PHASE III” by § 5125(b)(7)(A) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1840). Heading changed to include language after “AGREEMENTS” by § 1709(b)(1)(A) of P.L. 115-91, approved Dec. 12, 2017 (Stat.).

(1) **IN GENERAL.**—In the case of a small business concern that is awarded a funding agreement for Phase II of an SBIR or STTR program, a Federal agency may enter into a Phase III agreement with that business concern for additional work to be performed during or after the Phase II period. The Phase II funding agreement with the small business concern may, at the discretion of the agency awarding the agreement, set out the procedures applicable to Phase III agreements with that agency or any other agency. § 9(r)(2) to § 9(s)

(2) **DEFINITION.**—In this subsection, the term “Phase III agreement” means a follow-on, non-SBIR or non-STTR funded contract as described in paragraph (4)(C) or paragraph (6)(C) of subsection (e). “Phase III agreement.”

(3) **INTELLECTUAL PROPERTY RIGHTS.**—Each funding agreement under an SBIR or STTR program shall include provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(4)⁵⁸⁸ **COMPETITIVE PROCEDURES AND JUSTIFICATION FOR AWARDS.**—To the greatest extent practicable, Federal agencies and Federal prime contractors⁵⁸⁹ shall—

(A) consider an award under the SBIR program or the STTR program to satisfy the requirements under section 2304 of title 10, United States Code, and any other applicable competition requirements; and

(B) issue, without further justification, Phase III awards

relating to technology, including sole source awards, to the SBIR and STTR award recipients that developed the technology.

(s)⁵⁹⁰ **COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.**—All funds awarded, appropriated, or otherwise made available in accordance Competitive award.

⁵⁸⁸ New paragraph 9(r)(4) added by § 5108 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1832).

⁵⁸⁹ Phrase “shall issue Phase III awards” deleted and subparagraphs (A) and (B) added by § 1709(a) of P.L. 115-91, approved Dec. 12, 2017 (Stat.). Heading for paragraph 9(r)(4) changed from “PHASE III AWARDS” by § 1709(b)(1)(B) of P.L. 115-91.

⁵⁹⁰ New subsections 9(s) and (t) added by § 501(b)(1)(C) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2621). Section 501(b)(2) provides for the repeal of subsection 9(s) effective October 1, 2001. Program extended through FY 2005 by § 114(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Subsection 9(s) was completely rewritten by § 4 of P.L. 112-17, approved June 1, 2011 (125 Stat. 222). Text of former section 9(s) is reprinted below:

(s) **OUTREACH.**

(1) **DEFINITION OF ELIGIBLE STATE.**—In this subsection, the term “eligible State” means a State—

(A) if the total value of contracts awarded to the State during fiscal year 1995 under this section was less than \$5,000,000; and

(B) that certifies to the Administration described in paragraph (2) that the State will, upon receipt of assistance under this subsection, provide matching funds from non-Federal sources in an amount that is not less than 50 percent of the amount provided under this subsection.

(2) **PROGRAM AUTHORITY.**—Of amounts made available to carry out this section for each of the fiscal years 2000 through 2005 the Administrator may expend with eligible States not more than \$2,000,000 in each such fiscal

with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.

(t) INCLUSION IN STRATEGIC PLANS.—Program information relating to the SBIR and STTR programs shall be included by each Federal agency in any update or revision required of the Federal agency under section 306(b) of title 5, United States. [5 USC 306(b)].

(u)⁵⁹¹ COORDINATION OF TECHNOLOGY DEVELOPMENT PROGRAMS.—

(1) DEFINITION OF TECHNOLOGY DEVELOPMENT PROGRAM.—
In this subsection, the term “technology development program” means— “Technology development program.”

(A) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g); [42 USC 1862g].

(B) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(C) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

(D) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

(E) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

year in order to increase the participation of small business concerns located in those States in the programs under this section.

(3) AMOUNT OF ASSISTANCE.—The amount of assistance provided to an eligible State under this subsection in any fiscal year—

(A) shall be equal to twice the total amount of matching funds from non-Federal sources provided by the State; and
(B) shall not exceed \$100,000.

(4) USE OF ASSISTANCE.—Assistance provided to an eligible State under this subsection shall be used by the State, in consultation with State and local departments and agencies, for programs and activities to increase the participation of small business concerns located in the State in the programs under this section, including—

(A) the establishment of quantifiable performance goals, including goals relating to—

(i) the number of program awards under this section made to small business concerns in the State; and

(ii) the total amount of Federal research and development contracts awarded to small business concerns in the State;

(B) the provision of competition outreach support to small business concerns in the State that are involved in research and development; and

(C) the development and dissemination of educational and promotional information relating to the programs under this section to small business concerns in the State.

⁵⁹¹ New subsection 9(u) added by § 111(c) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

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(F) the Institutional Development Award Program of the National Institutes of Health; and

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§ 9(v)(1)

(G) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

(2) COORDINATION REQUIREMENTS.—Each Federal agency that is subject to subsection (f) and that has established a technology development program may, in each fiscal year, review for funding under that technology development program—

(A) any proposal to provide outreach and assistance to 1 or more small business concerns interested in participating in the SBIR program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—

- (i) a State that is eligible to participate in that program; or
- (ii) a State described in paragraph (3); or

(B) any proposal for Phase I of the SBIR program, if the proposal, though meritorious, is not funded through the SBIR program for that fiscal year due to funding restraints, from a small business concern located in—

- (i) a State that is eligible to participate in a technology development program; or
- (ii) a State described in paragraph (3).

(3) ADDITIONALLY ELIGIBLE STATE.—A State referred to in subparagraph (A)(ii) or (B)(ii) of paragraph (2) is a State in which the total value of contracts awarded to small business concerns under all SBIR programs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in biennial fiscal years, beginning with fiscal year 2000, based on the most recent statistics compiled by the Administrator.

(v)⁵⁹² REDUCING PAPERWORK AND COMPLIANCE BURDEN.—

(1) STANDARDIZATION OF REPORTING REQUIREMENTS.—The Administrator shall work with the Federal agencies required by this section to have an SBIR or STTR⁵⁹³ program to standardize reporting requirements for the collection of data from SBIR or STTR applicants and awardees, including data for inclusion in the database under subsection (k), taking into consideration the unique needs of each agency, and to the extent

Simplified reporting requirements.

⁵⁹² New subsection 9(v) added by § 113 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Heading changed from “SIMPLIFIED REPORTING REQUIREMENTS” by § 5144(1) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1857)

⁵⁹³ References to STTR throughout subsection 9(v) added by § 7(a) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 265).

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§ 9(x)(2)(A)

le, permitting the updating of previously reported information by electronic means. Such requirements shall be designed to minimize the burden on small businesses.

(2)⁵⁹⁴ SIMPLIFICATION OF APPLICATION AND AWARD PROCESS.

—Not later than 1 year after the date of enactment of this paragraph, and after a period of public comment, the Administrator shall issue regulations or guidelines, taking into consideration the unique needs of each Federal agency, to ensure that each Federal agency required to carry out an SBIR program or STTR program simplifies and standardizes the program proposal, selection, contracting, compliance, and audit procedures for the SBIR program or STTR program of the Federal agency (including procedures relating to overhead rates for applicants and documentation requirements) to reduce the paperwork and regulatory compliance burden on small business concerns applying to and participating in the SBIR program or STTR program.

(w)⁵⁹⁵ STTR MODEL AGREEMENT FOR INTELLECTUAL PROPERTY RIGHTS.—

STTR model agreement for intellectual property rights.

(1) IN GENERAL.—The Administrator shall promulgate regulations establishing a single model agreement for use in the STTR program that allocates between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

Regulations.

(2) OPPORTUNITY FOR COMMENT.—In promulgating regulations under paragraph (1), the Administrator shall provide to affected agencies, small business concerns, research institutions, and other interested parties the opportunity to submit written comments.

(x)⁵⁹⁶ RESEARCH AND DEVELOPMENT FOCUS.—

Research and development focus.

(1) REVISION AND UPDATE OF CRITERIA AND PROCEDURES OF IDENTIFICATION.—In carrying out subsection (g), the Secretary of Defense shall, not less often than once every 4 years, revise and update the criteria and procedures utilized to identify areas of the research and development efforts of the Department of Defense which are suitable for the provision of funds under the Small Business Innovation Research Program and the Small Business Technology Transfer Program.

(2) UTILIZATION OF PLANS.—The criteria and procedures described in paragraph (1) shall be developed through the use of the most current versions of the following plans:

⁵⁹⁴ New paragraph 9(v)(2) added by § 5144(3) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1857).

⁵⁹⁵ New subsection 9(w) added by § 7(a) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 265).

⁵⁹⁶ New subsections 9(x) and (y) were added by § 252(a) of P.L. 109-163, approved Jan. 6, 2006 (119 Stat. 3177).

(A) The Joint Warfighting Science and Technology Plan required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201; 10 U.S.C. 2501 note).

(B) The Defense Technology Area Plan of the Department of Defense.

(C) The Basic Research Plan of the Department of Defense.

(3) INPUT IN IDENTIFICATION OF AREAS OF EFFORT.—The criteria and procedures described in paragraph (1) shall include input in the identification of areas of research and development efforts described in that paragraph from Department of Defense program managers (PMs) and program executive officers (PEOs).

(y) COMMERCIALIZATION READINESS⁵⁹⁷ PROGRAM.—

Commerciali-
zation
Readiness
Program.

(1) IN GENERAL.—The Secretary of Defense and the Secretary of each military department is authorized to create and administer a “Commercialization Readiness Program” to accelerate the transition of technologies, products, and services developed under the Small Business Innovation Research Program or Small Business Technology Transfer Program⁵⁹⁸ to Phase III, including the acquisition process. The authority to create and administer a Commercialization Readiness Program under this subsection may not be construed to eliminate or replace any other SBIR program or STTR program that enhances the insertion or transition of SBIR or STTR technologies, including any such program in effect on the date of enactment of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163; 119 Stat. 3136).

(2) IDENTIFICATION OF RESEARCH PROGRAMS FOR ACCELERATED TRANSITION TO ACQUISITION PROCESS.—In carrying out the Commercialization Readiness Program, the Secretary of Defense and the Secretary of each military department shall identify research programs of the Small Business Innovation Research Program or Small Business Technology Transfer Program⁵⁹⁹ that have the potential for rapid transitioning to Phase III and into the acquisition process.

(3) LIMITATION.—No research program may be identified under paragraph (2) unless the Secretary of the military department concerned certifies in writing that the successful transition of the program to Phase III and into the acquisition process is expected to meet high priority military requirements of such military department.

⁵⁹⁷ “Pilot” changed to “Readiness” throughout the subsection by § 5122(a)(2) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1835).

⁵⁹⁸ Reference to STTR added by § 5122(a)(3)(A) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1835). The last sentence in paragraph (1) added by § 5122(a)(3)(B) of P.L. 112-81.

⁵⁹⁹ Reference to STTR added by § 5122(a)(4) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1835).

(4)⁶⁰⁰ FUNDING.—For payment of expenses incurred to administer the Commercialization Readiness Program under this subsection, the Secretary of Defense and each Secretary of a military department is authorized to use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program. Such funds shall not be used to make Phase III awards.

(5)⁶⁰¹ INSERTION INCENTIVES.—For any contract with a value of not less than \$100,000,000, the Secretary of Defense is authorized to—

(A) establish goals for the transition of Phase III technologies in subcontracting plans; and

⁶⁰⁰ Paragraphs 9(y)(4) and (5) redesignated as (5) and (6) and new paragraph (4) added by § 1615(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2066). Section 1615(c) of P.L. 112-239 provides that “[T]he amendments made by this section shall take effect as of January 1, 2012.”

⁶⁰¹ Paragraph 9(y)(4) deleted and paragraphs (5) and (6) redesignated as (4) and (5) by § 5141(b)(1)(B) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1853). Text of former paragraph 9(y)(4) is reprinted below:

(4) FUNDING.—For payment of expenses incurred to administer the Commercialization Readiness Program under this subsection, the Secretary of Defense and each Secretary of a military department is authorized to use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program. Such funds—
(A) shall not be subject to the limitations on the use of funds in subsection (f)(2); and
(B) shall not be used to make Phase III awards.

Section 5141(b)(2) of P.L. 112-81 provides:

TRANSITIONAL RULE.—Notwithstanding the amendments made by paragraph (1), subsections (f)(2) and (y)(4) of section 9 of the Small Business Act (15 U.S.C. 638), as in effect on the day before the date of enactment of this Act, shall continue to apply to each Federal agency until the effective date of the performance criteria established by the Administrator under subsection (mm)(3) of section 9 of the Small Business Act, as added by subsection (a).

Section 5141(b)(3) provides:

PROSPECTIVE REPEAL.—Effective on the first day of the fourth full fiscal year following the date of enactment of this Act, section 9 of the Small Business Act (15 U.S.C. 638), as amended by paragraph (1) of this section, is amended—

(A)—

(B) in subsection (y)—

(i) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(ii) by inserting after paragraph (3) the following:

(4) FUNDING.—

(A) IN GENERAL.—The Secretary of Defense and each Secretary of a military department may use not more than an amount equal to 1 percent of the funds available to the Department of Defense or the military department pursuant to the Small Business Innovation Research Program for payment of expenses incurred to administer the Commercialization Readiness Program under this subsection.

(B) LIMITATIONS.—The funds described in subparagraph (A)—

(i) shall not be subject to the limitations on the use of funds in subsection (f)(2); and

(ii) shall not be used to make Phase III awards.

(B) require a prime contractor on such a contract to report the number and dollar amount of contracts entered into by that prime contractor for Phase II SBIR or STTR projects. § 9(y)(6) to § 9(z)(1)(B)

(6)⁶⁰² GOAL FOR SBIR AND STTR TECHNOLOGY INSERTION.—The Secretary of Defense shall—

(A) set a goal to increase the number of Phase II SBIR contracts and the number of Phase II STTR contracts awarded by the Secretary that lead to technology transition into programs of record or fielded systems;

(B) use incentives in effect on the date of enactment of the SBIR/STTR Reauthorization Act of 2011, or create new incentives, to encourage agency program managers and prime contractors to meet the goal under subparagraph (A); and

(C) submit to the Administrator for inclusion in the annual report under subsection (b)(7)—

(i) the number and percentage of Phase II SBIR and STTR contracts awarded by the Secretary that led to technology transition into programs of record or fielded systems;

(ii) information on the status of each project that received funding through the Commercialization Readiness Program and efforts to transition those projects into programs of record or fielded systems; and

(iii) a description of each incentive that has been used by the Secretary under subparagraph (B) and the effectiveness of that incentive with respect to meeting the goal under subparagraph (A).

(z)⁶⁰³ ENCOURAGING INNOVATION IN ENERGY EFFICIENCY.—

(1) FEDERAL AGENCY ENERGY-RELATED PRIORITY.—In carrying out its duties under this section relating to SBIR and STTR solicitations by Federal departments and agencies, the Administrator shall—

(A) ensure that such departments and agencies give high priority to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects; and

Encouraging innovation in energy efficiency.

⁶⁰² Sunset changed from 2009 to 2010 by § 848 of P.L. 111-84, approved Oct. 28, 2009 (123 Stat. 2420). Sunset changed from 2010 to 2011 by § 3(c) of P.L. 112-17, approved June 1, 2011 (125 Stat. 221). Sunset provision deleted and new paragraph (6) added by § 5122(a) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1835).

⁶⁰³ New subsection 9(z) added by § 1203(e) of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1771).

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§ 9(z)(4)(C)

(B) include in the annual report to Congress under subsection (b) the determination of whether the priority described in subparagraph (A) is being carried out.

(2) CONSULTATION REQUIRED.—The Administrator shall consult with the heads of other Federal departments and agencies in determining whether priority has been given to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects, as required by this subsection.

(3) GUIDELINES.—The Administrator shall, as soon as is practicable after the date of enactment of this subsection, issue guidelines and directives to assist Federal agencies in meeting the requirements of this subsection.

Guidelines.

(4) DEFINITIONS.—In this subsection—

(A) the term “biomass”—

“Biomass.”

(i) means any organic material that is available on a renewable or recurring basis, including—

- (I) agricultural crops;
- (II) trees grown for energy production;
- (III) wood waste and wood residues;
- (IV) plants (including aquatic plants and grasses);
- (V) residues;
- (VI) fibers;
- (VII) animal wastes and other waste materials; and
- (VIII) fats, oils, and greases (including recycled fats,

oils, and grasses); and

(ii) does not include—

- (I) paper that is commonly recycled; or
- (II) unsegregated solid waste;

(B) the term “energy efficiency project” means the installation or upgrading of equipment that results in a significant reduction energy usage; and

“Energy efficiency project.”

§ 9(z)(4)(C)(i) to
§ 9(aa)(4)(B)
energy
system.”

derived from— (C) the term “renewable energy system” means a system of energy derived from—
geothermal source; or (i) a wind, solar, biomass (including biodiesel), or
(ii) hydrogen derived from biomass or water using an energy source described in clause (i).

(aa)⁶⁰⁴ LIMITATION ON SIZE OF AWARDS.—

(1) LIMITATION.—No Federal agency may issue an award under the SBIR program or the STTR program if the size of the award exceeds the award guidelines established under this section by more than 50 percent.

(2) MAINTENANCE OF INFORMATION.—Participating agencies shall maintain information on awards exceeding the guidelines established under this section, including—

- (A) the amount of each award;
- (B) a justification for exceeding the guidelines for each award;
- (C) the identity and location of each award recipient; and
- (D) whether an award recipient has received any venture capital, hedge fund, or private equity firm investment and, if so, whether the recipient is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(3) REPORTS.—The Administrator shall include the information described in paragraph (2) in the annual of the Administrator to Congress.

(4) WAIVER FOR SPECIFIC TOPIC.—Upon the receipt of an application from a Federal agency, the Administrator may grant a waiver from the requirement under paragraph (1) with respect to a specific topic (but not for the agency as a whole) for a fiscal year if the Administrator determines, based on the information contained in the application from the agency, that—

- (A) the requirement under paragraph (1) will interfere with the ability of the agency to fulfill its research mission through the SBIR program or the STTR program; and

⁶⁰⁴ New subsection 9(aa) added by § 5103(d) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1825).

§ 9(aa)(5) to (B) the agency will minimize, to the maximum extent possible, the
 § 9(dd) er of awards that do not satisfy the requirement under paragraph (1) to preserve the
 nature and intent of the SBIR program and the STTR program.

(5) RULE OF CONSTRUCTION.—Nothing in this subsection shall be construed to prevent a Federal agency from supplementing an award under the SBIR program or the STTR program using funds of the Federal agency that are not part of the SBIR program or the STTR program of the Federal agency.

(bb)⁶⁰⁵ SUBSEQUENT PHASE II AWARDS.—

(1) AGENCY FLEXIBILITY.—A small business concern that received a Phase I award from a Federal agency under this section shall be eligible to receive a subsequent Phase II award from another Federal agency, if the head of each relevant Federal agency or the relevant component of the Federal agency makes a written determination that the topics of the relevant awards are the same and both agencies report the awards to the Administrator for inclusion in the public database under subsection (k).

(2) SBIR AND STTR PROGRAM FLEXIBILITY.—A small business concern that received a Phase I award under this section under the SBIR program or the STTR program may receive a subsequent Phase II award in either the SBIR program or the STTR program and the participating agency or agencies shall report the awards to the Administrator for inclusion in the public database under subsection (k).

(3) PREVENTING DUPLICATIVE AWARDS.—The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(cc)⁶⁰⁶ PHASE FLEXIBILITY.—During fiscal years 2012 through 2022⁶⁰⁷, the National Institutes of Health, the Department of Defense, and the Department of Education may each provide to a small business concern an award under Phase II of the SBIR program with respect to a project, without regard to whether the small business concern was provided an award under Phase I of an SBIR program with respect to such project, if the head of the applicable agency determines that the small business concern has completed the determinations described in subsection (e)(4)(A) with respect to such project despite not having been provided a Phase I award.

⁶⁰⁵ New subsection 9(bb) added by § 5104 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1826).

⁶⁰⁶ New subsection 9(cc) added by § 5106 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1826).

⁶⁰⁷ Date changed from 2017 to 2022 by § 854(a)(1) of P.L. 115-232, approved August 13, 2018 (Stat.).

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§ 9(dd)(1)(A)

(dd)⁶⁰⁸ PARTICIPATION OF SMALL BUSINESS CONCERNS MAJORITY-OWNED BY VENTURE CAPITAL OPERATING COMPANIES, HEDGE FUNDS, OR PRIVATE EQUITY FIRMS IN THE SBIR PROGRAM.—

(1) AUTHORITY.—Upon providing a written determination described in paragraph (2) to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives, not later than 30 days before the date on which any such award is made—

⁶⁰⁸ New subsection 9(dd) added by § 5107(a) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1827). Section 5107(c) of P.L. 112-81 provides:

(c) RULEMAKING TO ENSURE THAT FIRMS THAT ARE MAJORITY-OWNED BY MULTIPLE VENTURE CAPITAL OPERATING COMPANIES, HEDGE FUNDS, OR PRIVATE EQUITY FIRMS ARE ABLE TO PARTICIPATE IN A PORTION OF THE SBIR PROGRAM.—

(1) STATEMENT OF CONGRESSIONAL INTENT.—It is the stated intent of Congress that the Administrator should promulgate regulations to carry out the authority under section 9(dd) of the Small Business Act, as added by this section, that—

(A) permit small business concerns that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms to participate in the SBIR program in accordance with section 9(dd) of the Small Business Act;

(B) provide specific guidance for small business concerns that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms with regard to eligibility, participation, and affiliation rules; and

(C) preserve and maintain the integrity of the SBIR program as a program for small business concerns in the United States by prohibiting large businesses or large entities or foreign-owned businesses or foreign-owned entities from participation in the program established under section 9 of the Small Business Act.

(2) RULEMAKING REQUIRED.—

(A) PROPOSED REGULATIONS.—Not later than 120 days after the date of enactment of this Act, the Administrator shall issue proposed regulations to amend section 121.103 (relating to determinations of affiliation applicable to the SBIR program) and section 121.702 (relating to ownership and control standards and size standards applicable to the SBIR program) of title 13, Code of Federal Regulations, for firms that are majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and participating in the SBIR program solely under the authority under section 9(dd) of the Small Business Act, as added by this section.

(B) FINAL REGULATIONS.—Not later than 1 year after the date of enactment of this Act, and after providing notice of and opportunity for comment on the proposed regulations issued under subparagraph (A), the Administrator shall issue final or interim final regulations under this subsection.

(3) CONTENTS.—

(A) IN GENERAL.—The regulations issued under this subsection shall permit the participation of applicants majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms in the SBIR program in accordance with section 9(dd) of the Small Business Act, as added by this section, unless the Administrator determines—

(i) in accordance with the size standards established under subparagraph (B), that the applicant is—

(I) a large business or large entity; or

(II) majority-owned or controlled by a large business or large entity; or

(ii) in accordance with the criteria established under subparagraph (C), that the applicant—

(I) is a foreign-owned business or a foreign entity or is not a citizen of the United States or alien lawfully admitted for permanent residence; or

(II) is majority-owned or controlled by a foreign-owned business, foreign entity, or person who is not a citizen of the United States or alien lawfully admitted for permanent residence.

(B) SIZE STANDARDS.—Under the authority to establish size standards under paragraphs (2) and (3) of section 3(a) of the Small Business Act (15 U.S.C. 632(a)), the Administrator shall, in accordance with paragraph (1) of this

(A) the Director of the National Institutes of Health, the Secretary of Energy, and the Director of the National Science Foundation may award not more than 25 percent of the funds allocated for the SBIR program of the applicable Federal agency to small business concerns that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns; and

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§ 9(dd)(4)(B)

(B) the head of a Federal agency other than a Federal agency described in subparagraph (A) that participates in the SBIR program may award not more than 15 percent of the funds allocated for the SBIR program of the Federal agency to small

subsection, establish size standards for applicants seeking to participate in the SBIR program solely under the authority under section 9(dd) of the Small Business Act, as added by this section.

(C) CRITERIA FOR DETERMINING FOREIGN OWNERSHIP.—The Administrator shall establish criteria for determining whether an applicant meets the requirements under subparagraph (A)(ii), and, in establishing the criteria, shall consider whether the criteria should include—

- (i) whether the applicant is at least 51 percent owned or controlled by citizens of the United States or domestic venture capital operating companies, hedge funds, or private equity firms;
- (ii) whether the applicant is domiciled in the United States; and
- (iii) whether the applicant is a direct or indirect subsidiary of a foreign-owned firm, including whether the criteria should include that an applicant is a direct or indirect subsidiary of a foreign-owned entity if—
 - (I) any venture capital operating company, hedge fund, or private equity firm that owns more than 20 percent of the applicant is a direct or indirect subsidiary of a foreign-owned entity; or
 - (II) in the aggregate, entities that are direct or indirect subsidiaries of foreign-owned entities own more than 49 percent of the applicant.

(D) CRITERIA FOR DETERMINING AFFILIATION.—The Administrator shall establish criteria, in accordance with paragraph (1), for determining whether an applicant is affiliated with a venture capital operating company, hedge fund, private equity firm, or any other business that the venture capital operating company, hedge fund, or private equity firm has financed and, in establishing the criteria, shall specify that—

- (i) if a venture capital operating company, hedge fund, or private equity firm that is determined to be affiliated with an applicant is a minority investor in the applicant, the portfolio companies of the venture capital operating company, hedge fund, or private equity firm shall not be determined to be affiliated with the applicant, unless—
 - (I) the venture capital operating company, hedge fund, or private equity firm owns a majority of the portfolio company; or
 - (II) the venture capital operating company, hedge fund, or private equity firm holds a majority of the seats on the board of directors of the portfolio company;
- (ii) subject to clause (i), the Administrator retains the authority to determine whether a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant, including establishing other criteria;
- (iii) the Administrator may not determine that a portfolio company of a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant based solely on 1 or more shared investors; and
- (iv) subject to clauses (i), (ii), and (iii), the Administrator retains the authority to determine whether a portfolio company of a venture capital operating company, hedge fund, or private equity firm is affiliated with an applicant based on factors independent of whether there is a shared investor, such as whether there are contractual obligations between the portfolio company and the applicant.

(4) ENFORCEMENT.—If the Administrator does not issue final or interim final regulations under this subsection on or before the date that is 1 year after the date of enactment of this Act, the Administrator may not carry out or establish any pilot program until the date on which the Administrator issues the final or interim final regulations under this subsection.

(5) DEFINITION.—In this subsection, the terms “venture capital operating company”, “hedge fund”, and “private equity firm” have the same meaning as in section 3 of the Small Business Act (15 U.S.C. 632), as amended by this section.

(d) ASSISTANCE FOR DETERMINING AFFILIATES.—

(1) CLEAR EXPLANATION REQUIRED.—Not later than 30 days after the date of enactment of this Act, the Administrator shall post on the Web site of the Administration (with a direct link displayed on the homepage of the

business concerns that are owned in majority part by multiple venture capital operating companies, hedge funds, or private equity firms through competitive, merit-based procedures that are open to all eligible small business concerns.

(2) DETERMINATION.—A written determination described in this paragraph is a written determination by the head of a Federal agency that explains how the use of the authority under paragraph (1) will—

(A) induce additional venture capital, hedge fund, or private equity firm funding of small business innovations;

(B) substantially contribute to the mission of the Federal agency;

(C) demonstrate a need for public research; and

(D) otherwise fulfill the capital needs of small business concerns for additional financing for SBIR projects.

(3) REGISTRATION.—A small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms and qualified for participation in the program authorized under paragraph (1) shall—

(A) register with the Administrator on the date that the small business concern submits an application for an award under the SBIR program; and

(B) indicate in any SBIR proposal that the small business concern is registered under subparagraph (A) as majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(4) COMPLIANCE.—

(A) IN GENERAL.—The head of a Federal agency that makes an award under this subsection during a fiscal year shall collect and submit to the Administrator data relating to the number and dollar amount of Phase I awards, Phase II awards, and any other category of awards by the Federal agency under the SBIR program during that fiscal year.

Web site of the Administration or the SBIR and STTR Web sites of the Administration)—

(A) a clear explanation of the SBIR and STTR affiliation rules under part 121 of title 13, Code of Federal Regulations; and

(B) contact information for officers or employees of the Administration who—

(i) upon request, shall review an issue relating to the rules described in subparagraph (A); and

(ii) shall respond to a request under clause (i) not later than 20 business days after the date on which the request is received.

(2) INCLUSION OF AFFILIATION RULES FOR CERTAIN SMALL BUSINESS CONCERNS.—On and after the date on which the final regulations under subsection (c) are issued, the Administrator shall post on the Web site of the Administration information relating to the regulations, in accordance with paragraph (1).

§ 9(dd)(5) to § 9(dd)(7) (B) ANNUAL REPORTING.—The Administrator shall include as part of each annual report by the Administration under subsection (b)(7) any data submitted to paragraph (A) and a discussion of the compliance of each Federal agency that award under this subsection during the fiscal year with the maximum percentages under paragraph (1). Annual reporting.

(5) ENFORCEMENT.—If a Federal agency awards more than the percent of the funds allocated for the SBIR program of the Federal agency authorized under paragraph (1) for a purpose described in paragraph (1), the head of the Federal agency shall transfer an amount equal to the amount awarded in excess of the amount authorized under paragraph (1) to the funds for general SBIR programs from the non-SBIR and non-STTR research and development funds of the Federal agency not later than 180 days after the date on which the Federal agency made the award that caused the total awarded under paragraph (1) to be more than the amount authorized under paragraph (1) for a purpose described in paragraph (1).

(6) FINAL DECISIONS ON APPLICATIONS UNDER THE SBIR PROGRAM.—

(A) DEFINITION.—In this paragraph, the term “covered small business concern” means a small business concern that— “Covered small business concern.”

(i) was not majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms on the date on which the small business concern submitted an application in response to a solicitation under the SBIR program; and

(ii) on the date of the award under the SBIR program is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms.

(B) IN GENERAL.—If a Federal agency does not make an award under a solicitation under the SBIR program before the date that is 9 months after the date on which the period for submitting applications under the solicitation ends—

(i) a covered small business concern is eligible to receive the award, without regard to whether the covered small business concern meets the requirements for receiving an award under the SBIR program for a small business concern that is majority-owned by multiple venture capital operating companies, hedge funds, or private equity firms, if the covered small business concern meets all other requirements for such an award; and

(ii) the head of the Federal agency shall transfer an amount equal to any amount awarded to a covered small business concern under the solicitation to the funds for general SBIR programs from the non-SBIR and non-STTR research and

development funds of the Federal agency, not later than 90 days after the date on which the Federal agency makes the award.

(7) EVALUATION CRITERIA.—A Federal agency may not use investment of venture capital or investment from hedge funds or private equity firms as a criterion for the award of contacts under the SBIR program or STTR program.

§ 9(ee) to
§ 9(ee)(4)

(ee)⁶⁰⁹ COLLABORATING WITH FEDERAL LABORATORIES AND RESEARCH AND DEVELOPMENT CENTERS.—

(1) AUTHORIZATION.—Subject to the limitations under this section, the head of each participating Federal agency may make SBIR and STTR awards to any eligible small business concern that—

(A) intends to enter into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award; or

(B) has entered into a cooperative research and development agreement (as defined in section 12(d) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710a(d))) with a Federal laboratory.

(2) PROHIBITION.—No Federal agency shall—

(A) condition an SBIR or STTR award upon entering into agreement with any Federal laboratory or any federally funded laboratory or research and development center for any portion of the activities to be performed under that award;

(B) approve an agreement between a small business concern receiving an SBIR or STTR award and a Federal laboratory or federally funded laboratory or research and development center, if the small business concern performs a lesser portion of the activities to be performed under that award than required by this section and by the SBIR Policy Directive and the STTR Policy Directive of the Administrator; or

(C) approve an agreement that violates any provision, including any data rights protections provision, of this section or the SBIR and the STTR Policy Directives.

(3) IMPLEMENTATION.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall modify the SBIR Policy Directive and the STTR Policy Directive issued under this section to ensure that small business concerns—

(A) have the flexibility to use the resources of the Federal laboratories or federally funded research and development centers; and

⁶⁰⁹ New subsection 9(ee) added by § 5109 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1832).

§ 9(ff) to
§ 9(gg)(2)(B)

(B) are not mandated to enter into agreement with any Federal laboratory or any federally funded laboratory or research and development center as a condition of an award.

(4) **ADVANCE PAYMENT.**—If a small business concern receiving an award under this section enters into an agreement with a Federal laboratory or federally funded research and development center for portions of the activities to be performed under that award, the Federal laboratory or federally funded research and development center may not require advance payment from the small business concern in an amount greater than the amount necessary to pay for 30 days of such activities.

(ff)⁶¹⁰ **ADDITIONAL SBIR AND STTR AWARDS.**—

(1) **EXPRESS AUTHORITY FOR AWARDING A SEQUENTIAL PHASE II AWARD.**—A small business concern that receives a Phase II SBIR award or a Phase II STTR award for a project remains eligible to receive 1 additional Phase II SBIR award or Phase II STTR award for continued work on that project.

(2) **PREVENTING DUPLICATIVE AWARDS.**—The head of a Federal agency shall verify that any activity to be performed with respect to a project with a Phase I or Phase II SBIR or STTR award has not been funded under the SBIR program or STTR program of another Federal agency.

(gg)⁶¹¹ **PILOT PROGRAM.**—

(1) **AUTHORIZATION.**—The head of each covered Federal agency may allocate not more than 10 percent of the funds allocated to the SBIR program and the STTR program of the covered Federal agency—

(A) for awards for technology development, testing, evaluation, and commercialization assistance for SBIR and STTR Phase II technologies; or

(B) to support the progress of research, research and development, and commercialization conducted under the SBIR or STTR programs to Phase III.

(2) **APPLICATION BY FEDERAL AGENCY.**—

(A) **IN GENERAL.**—A covered Federal agency may not establish a pilot program unless the covered Federal agency makes a written application to the Administrator, not later than 90 days before the first day of the fiscal year in which the pilot program is to be established, that describes a compelling reason that additional investment in SBIR or STTR technologies is necessary, including unusually high regulatory, systems

⁶¹⁰ New subsection 9(ff) added by § 5111 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1834).

⁶¹¹ New subsection 9(gg) added by § 5123 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1836).

integration, or other costs relating to development or manufacturing of identifiable, highly promising small business technologies or a class of such technologies expected to substantially advance the mission of the agency.

§ 9(gg)(2)(B)(i) to § 9(gg)(8)(B)

(B) DETERMINATION.—The Administrator shall—

(i) make a determination regarding an application submitted under subparagraph (A) not later than 30 days before the first day of the fiscal year for which the application is submitted;

(ii) publish the determination in the Federal Register; and

(iii) make a copy of the determination and any related materials available to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(3) MAXIMUM AMOUNT OF AWARD.—The head of a covered Federal agency may not make an award under a pilot program in excess of 3 times the dollar amounts generally established for Phase II awards under subsection (j)(2)(D) or (p)(2)(B)(ix).

(4) REGISTRATION.—Any applicant that receives an award under a pilot program shall register with the Administrator in a registry that is available to the public.

(5) AWARD CRITERIA OR CONSIDERATION.—When making an award under this section, the head of a covered Federal agency shall give consideration to whether the technology to be supported by the award is likely to be manufactured in the United States.

(6) REPORT.—The head of each covered Federal agency shall include in the annual report of the covered Federal agency to the Administrator an analysis of the various activities considered for inclusion in the pilot program of the covered Federal agency and a statement of the reasons why each activity considered was included or not included, as the case may be.

(7) TERMINATION.—The authority to establish a pilot program under this section expires at the end of fiscal year 2022⁶¹².

Sunset.

(8) DEFINITIONS.—In this subsection—

(A) the term “covered Federal agency”—

“Covered Federal agency.”

(i) means a Federal agency participating in the SBIR program or the STTR program; and

⁶¹² Date changed from 2017 to 2022 by § 854(a)(2) of P.L. 115-232, approved August 13, 2018 (Stat.).

§ 9(hh) to
§ 9(hh)(2)(B)

(ii) does not include the Department of Defense; and

(B) the term “pilot program” means each program established under paragraph (1).

“Pilot program.”

(hh)⁶¹³ TIMING OF RELEASE OF FUNDING.—

(1) IN GENERAL.—Federal agencies participating in the SBIR program or STTR program shall, to the extent possible, shorten⁶¹⁴ the amount of time between the provision of notice of an award under the SBIR program or STTR program and the subsequent release of funding with respect to the award.

(2)⁶¹⁵ PILOT PROGRAM TO ACCELERATE DEPARTMENT OF DEFENSE SBIR AND STTR AWARDS.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this paragraph, the Under Secretary of Defense for Research and Engineering, acting through the Director of Defense Procurement and Acquisition Policy of the Department of Defense, shall establish a pilot program to reduce the time for awards under the SBIR and STTR programs of the Department of Defense, under which the Department of Defense shall—

(i) develop simplified and standardized procedures and model contracts throughout the Department of Defense for Phase I, Phase II, and Phase III SBIR awards;

(ii) for Phase I SBIR and STTR awards, reduce the amount of time between solicitation closure and award;

(iii) for Phase II SBIR and STTR awards, reduce the amount of time between the end of a Phase I award and the start of the Phase II award;

(iv) for Phase II SBIR and STTR awards that skip Phase I, reduce the amount of time between solicitation closure and award;

(v) for sequential Phase II SBIR and STTR awards, reduce the amount of time between Phase II awards; and

⁶¹³ New subsections 9(hh) and (ii) added by § 5126(b) of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1841)

⁶¹⁴ Phrase “attempt to” deleted from before “shorten” by § 854(b)(1)(B) of P.L.115-232, approved August 13, 2018 (Stat.).

⁶¹⁵ New paragraph 9(hh)(2) added by § 854(b)(1)(C) of P.L. 115-232, approved August 13, 2018 (Stat.).

(vi) reduce the award times described in clauses (ii), (iii), (iv), and (v) to be as close to 90 days as possible.

(B) CONSULTATION.—In carrying out the pilot program under subparagraph (A), the Director of Defense Procurement and Acquisition Policy of the Department of Defense shall consult with the Director of the Office of Small Business Programs of the Department of Defense. § 9(hh)(2)(C) to § 9(ii)(2)(B)(iv)

(C) TERMINATION.—The pilot program under subparagraph (A) shall terminate on September 30, 2022. Sunset.

(ii) REPORTING ON TIMING.—

(1) IN GENERAL.—Federal agencies participating in the SBIR program or STTR program shall provide to the Administrator, for the annual report on the SBIR and STTR program under subsection (b)(7), the average amount of time the agency takes to make a final decision on proposals submitted under such programs, the average amount of time the agency takes to release funding with respect to an award under such programs, and the goals established to reduce such amounts.

(2)⁶¹⁶ COMPTROLLER GENERAL REPORTS.—The Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Armed Services of the Senate, the Committee on Small Business of the House of Representatives, and the Committee on Armed Services of the House of Representatives—

(A) not later than 1 year after the date of enactment of this paragraph, and every year thereafter for 3 years, a report that—

(i) provides the average and median amount of time that each component of the Department of Defense with an SBIR or STTR program takes to review and make a final decision on proposals submitted under the program; and

(ii) compares that average and median amount of time with that of other Federal agencies participating in the SBIR or STTR program; and

(B) not later than December 5, 2021, a report that—

(i) includes the information described in subparagraph (A);

(ii) assesses where each Federal agency participating in the SBIR or STTR program needs improvement with respect to the proposal review and award times under the program;

⁶¹⁶ New paragraph 9(ii)(2) added by § 854(b)(2) of P.L. 115-232, approved August 13, 2018 (Stat.).

(iii) identifies best practices for shortening the proposal review and award times under the SBIR and STTR programs, including the pros and cons of contracts compared to grants; and

§ 9(jj) to
§ 9(jj)(3)(B)(i)(II)

(iv) analyzes the efficacy of the pilot program established under subsection (hh)(2).

(jj)⁶¹⁷ PHASE 0 PROOF OF CONCEPT PARTNERSHIP PILOT PROGRAM.—

(1) IN GENERAL.—The Director of the National Institutes of Health may use \$5,000,000 of the funds allocated under subsection (n)(1) for a Proof of Concept Partnership pilot program to accelerate the creation of small businesses and the commercialization of research innovations from qualifying institutions. To implement this program, the Director shall award, through a competitive, merit-based process, grants to qualifying institutions. These grants shall only be used to administer Proof of Concept Partnership awards in conformity with this subsection.

(2) DEFINITIONS.—In this subsection—

(A) the term “Director” means the Director of the National Institutes of Health; “Director.”

(B) the term “pilot program” refers to the Proof of Concept Partnership pilot program; and “Pilot program.”

(C) the terms “qualifying institution” and “institution” mean a university or other research institution that participates in the National Institutes of Health’s STTR program. “Qualifying institution.”
“Institution.”

(3) PROOF OF CONCEPT PARTNERSHIPS.—

(A) IN GENERAL.—A Proof of Concept Partnership shall be set up by a qualifying institution to award grants to individual researchers. These grants should provide researchers with the initial investment and the resources to support the proof of concept work and commercialization mentoring needed to translate promising research projects and technologies into a viable company. This work may include technical validations, market research, clarifying intellectual property rights position and strategy, and investigating commercial or business opportunities.

(B) AWARD GUIDELINES.—The administrator of a Proof of Concept Partnership program shall award grants in accordance with the following guidelines:

(i) The Proof of Concept Partnership shall use a market-focused project management oversight process, including—

⁶¹⁷ New subsection 9(jj) added by § 5127 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1842).

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(I) a rigorous, diverse review board comprised of local experts in translational and proof of concept research, including industry, start-up, venture capital, technical, financial, and business experts and university technology transfer officials;

(II) technology validation milestones focused on ^{§ 9(j)(3)(B)(i)(III) to § 9(j)(5)(A)} market feasibility;

(III) simple reporting effective at redirecting projects; and

(IV) the willingness to reallocate funding from failing projects to those with more potential.

(ii) Not more than \$100,000 shall be awarded towards an individual proposal.

(C) EDUCATIONAL RESOURCES AND GUIDANCE.—The administrator of a Proof of Concept Partnership program shall make educational resources and guidance available to researchers attempting to commercialize their innovations.

(4) AWARDS.—

(A) SIZE OF AWARD.—The Director may make awards to a qualifying institution for up to \$1,000,000 per year for up to 4⁶¹⁸ years.

(B) AWARD CRITERIA.—In determining which qualifying institutions receive pilot program grants, the Director shall consider, in addition to any other criteria the Director determines necessary, the extent to which qualifying institutions—

(i) have an established and proven technology transfer or commercialization office and have a plan for engaging that office in the program's implementation;

(ii) have demonstrated a commitment to local and regional economic development;

(iii) are located in diverse geographies and are of diverse sizes;

(iv) can assemble project management boards comprised of industry, start-up, venture capital, technical, financial, and business experts;

(v) have an intellectual property rights strategy or office; and

⁶¹⁸ Changed from 3 years by § 854 (a)(3)(A) of P.L. 115-232, approved August 13, 2018 (Stat.).

(vi) demonstrate a plan for sustainability beyond the duration of the funding award.

§ 9(jj)(5)(A)(i) to
§ 9(kk)(1)

(5) LIMITATIONS.—The funds for the pilot program shall not be used—

(A) for basic research, but to evaluate the commercial potential of existing discoveries, including—

(i) proof of concept research or prototype development;
and

(ii) activities that contribute to determining a project’s commercialization path, to include technical validations, market research, clarifying intellectual property rights, and investigating commercial and business opportunities; or

(B) to fund the acquisition of research equipment or supplies unrelated to commercialization activities.

(6) EVALUATIVE REPORT.—The Director shall submit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate an evaluative report regarding the activities of the pilot program. The report shall include—

(A) a detailed description of the institutional and proposal selection process;

(B) an accounting of the funds used in the pilot program;

(C) a detailed description of the pilot program, including incentives and activities undertaken by review board experts;

(D) a detailed compilation of results achieved by the pilot program, including the number of small business concerns included and the number of business packages developed, and the number of projects that progressed into subsequent STTR phases; and

(E) an analysis of the program’s effectiveness with supporting data.

(7) SUNSET.—The pilot program under this subsection shall terminate at the end of fiscal year 2022⁶¹⁹.

Sunset.

⁶¹⁹ Changed from 2017 by § 854(a)(3)(B) of P.L. 115-232, approved August 13, 2018 (Stat.).

(kk)⁶²⁰ PHASE III REPORTING.—The annual SBIR or STTR report to Congress by the Administration under subsection (b)(7) shall include, for each Phase III award—

- (1) the name of the agency or component of the agency or the non-Federal source of capital making the Phase III award; § 9(kk)(2) to § 9(mm)(2)(B)
- (2) the name of the small business concern or individual receiving the Phase III award; and
- (3) the dollar amount of the Phase III award.

(ll)⁶²¹ CONSENT TO RELEASE CONTACT INFORMATION TO ORGANIZATIONS.—

(1) ENABLING CONCERN TO GIVE CONSENT.—Each Federal agency required by this section to conduct an SBIR program or an STTR program shall enable a small business concern that is an SBIR applicant or an STTR applicant to indicate to the Federal agency whether the Federal agency has the consent of the concern to—

- (A) identify the concern to appropriate local and State-level economic development organizations as an SBIR applicant or an STTR applicant; and
- (B) release the contact information of the concern to such organizations.

(2) RULES.—The Administrator shall establish rules to implement this subsection. The rules shall include a requirement that a Federal agency include in the SBIR and STTR application a provision through which the applicant can indicate consent for purposes of paragraph (1).

Rules.

(mm)⁶²² ASSISTANCE FOR ADMINISTRATIVE, OVERSIGHT, AND CONTRACT PROCESSING COSTS.—

(1) IN GENERAL.—Subject to paragraph (3), and until September 30, 2022⁶²³, the Administrator shall allow each Federal agency required to conduct an SBIR program to use not more than 3 percent of the funds allocated to the SBIR program of the Federal agency for—

⁶²⁰ New subsection 9(kk) added by § 5138 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1851).

⁶²¹ New subsection 9(ll) added by § 5140 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1851).

⁶²² New subsection 9(mm) added by § 5141 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1852).

⁶²³ Phrase “for the 3 fiscal years beginning after the date of enactment of this subsection” replaced with current language by § 873(e) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 940). Date changed from 2017 to 2022 by § 854(a)(4)(A)(i) of P.L. 115-232, approved August 13, 2018 (Stat.).

- § 9(mm)(2)(C) to
§ 9(mm)(3)
- (A) the administration of the SBIR program or the STTR program of the Federal agency;
 - (B) the provision of outreach and technical assistance relating to the SBIR program or STTR program of the Federal agency, including technical assistance site visits, personnel interviews, and national conferences;
 - (C) the implementation of commercialization and outreach initiatives that were not in effect on the date of enactment of this subsection;
 - (D) carrying out the program under subsection (y);
 - (E) activities relating to oversight and congressional reporting, including waste, fraud, and abuse prevention activities;
 - (F) targeted reviews of recipients of awards under the SBIR program or STTR program of the Federal agency that the head of the Federal agency determines are at high risk for fraud, waste, or abuse to ensure compliance with requirements of the SBIR program or STTR program, respectively;
 - (G) the implementation of oversight and quality control measures, including verification of reports and invoices and cost reviews;
 - (H) carrying out subsection (dd);
 - (I) contract processing costs relating to the SBIR program or STTR program of the Federal agency; and
 - (J) funding for additional personnel and assistance with application reviews.
 - (K)⁶²⁴ funding for improvements that increase commonality across data systems, reduce redundancy, and improve data oversight and accuracy.

(2) OUTREACH AND TECHNICAL ASSISTANCE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a Federal agency participating in the program under this subsection shall use a portion of the funds authorized for uses under paragraph (1) to carry out the policy directive required under subsection (j)(2)(F) and to increase the participation of States with respect to which a low level of SBIR awards have historically been awarded.

(B) WAIVER.—A Federal agency may request the Administrator to waive the requirement contained in subparagraph (A). Such request shall include an explanation of why the waiver is necessary. The Administrator may grant the waiver based

⁶²⁴ New subparagraph 9(mm)(1)(K) added by § 854(a)(4)(A)(ii) of P.L. 115-232, approved August 13, 2018 (Stat.).

on a determination that the agency has demonstrated a sufficient need for the waiver, that the outreach objectives of the agency are being met, and that there is increased participation by States with respect to which a low level of SBIR awards have historically been awarded. § 9(mm)(4) to § 9(nn)(3)

(3) PERFORMANCE CRITERIA.—A Federal agency may not use funds as authorized under paragraph (1) until after the effective date of performance criteria, which the Administrator shall establish, to measure any benefits of using funds as authorized under paragraph (1) and to assess continuation of the authority under paragraph (1).

(4) RULES.—Not later than 180 days after the date of enactment of this subsection, the Administrator shall issue rules to carry out this subsection. Rules.

(5) COORDINATION WITH IG.—Each Federal agency shall coordinate the activities funded under subparagraph (E), (F), or (G) of paragraph (1) with their respective Inspectors General, when appropriate, and each Federal agency that allocates more than \$50,000,000 to the SBIR program of the Federal agency for a fiscal year may share such funding with its Inspector General when the Inspector General performs such activities.

(6) REPORTING.—The Administrator shall collect data and provide to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business, the Committee on Science, Space, and Technology, and the Committee on Appropriations of the House of Representatives a report on the use of funds under this subsection, including funds used to achieve the objectives of paragraph (2)(A) and any use of the waiver authority under paragraph (2)(B). Report.

(nn)⁶²⁵ ANNUAL REPORT ON SBIR AND STTR PROGRAM GOALS.—

(1) DEVELOPMENT OF METRICS.—The head of each Federal agency required to participate in the SBIR program or the STTR program shall develop metrics to evaluate the effectiveness and the benefit to the people of the United States of the SBIR program and the STTR program of the Federal agency that—

- (A) are science-based and statistically driven;
- (B) reflect the mission of the Federal agency; and
- (C) include factors relating to the economic impact of the programs.

(2) EVALUATION.—The head of each Federal agency described in paragraph (1) shall conduct an annual evaluation using the metrics developed under paragraph (1) of—

⁶²⁵ New subsection 9(nn) added by § 5161 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1858).

(A) the SBIR program and the STTR program of the Federal agency; and

§ 9(nn)(3)(A)(to § 9(pp)(3)(A) (B) the benefits to the people of the United States of the SBIR program and the STTR program of the Federal agency.

(3) REPORT.—

(A) IN GENERAL.—The head of each Federal agency described in paragraph (1) shall submit to the appropriate committees of Congress and the Administrator an annual report describing in detail the results of an evaluation conducted under paragraph (2).

(B) PUBLIC AVAILABILITY OF REPORT.—The head of each Federal agency described in paragraph (1) shall make each report submitted under subparagraph (A) available to the public online.

(C) DEFINITION.—In this paragraph, the term “appropriate committees of Congress” means—

“Appropriate committees of Congress”.

(i) the Committee on Small Business and Entrepreneurship of the Senate; and

(ii) the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives.

(oo)⁶²⁶ COMPETITIVE SELECTION PROCEDURES FOR SBIR AND STTR PROGRAMS.—All funds awarded, appropriated, or otherwise made available in accordance with subsection (f) or (n) must be awarded pursuant to competitive and merit-based selection procedures.

(pp)⁶²⁷ LIMITATION ON PILOT PROGRAMS.—

(1) EXISTING PILOT PROGRAMS.—The Administrator may only carry out a covered pilot program that is in operation on the date of enactment of this subsection during the 3-year period beginning on such date of enactment.

(2) NEW PILOT PROGRAMS.—The Administrator may only carry out a covered pilot program established after the date of enactment of this subsection—

(A) during the 3-year period beginning on the date on which such program is established; and

⁶²⁶ New subsection 9(oo) added by § 5162 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1858).

⁶²⁷ New subsection 9(pp) added by § 5164 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1859).

(B) if such program does not continue and is not based on, in any manner, a previously established covered pilot program.

(3) COVERED PILOT PROGRAM DEFINED.—In this subsection, § 9(pp)(3)(B) to term “covered pilot program” means any initiative, project, innovation, or other activity- § 9(qq)(2)(A)(i)

- (A) established by the Administrator;
- (B) relating to an SBIR or STTR program; and
- (C) not specifically authorized by law.

(qq)⁶²⁸ MINIMUM STANDARDS FOR PARTICIPATION.—

(1) PROGRESS TO PHASE II SUCCESS.—

(A) ESTABLISHMENT OF SYSTEM AND MINIMUM COMMERCIALIZATION RATE.—Not later than 1 year after the date of enactment of this subsection, the head of each Federal agency participating in the SBIR or STTR program shall —

(i) establish a system to measure, where appropriate, the success of small business concerns with respect to the receipt of Phase II SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards;

(ii) establish a minimum performance standard for small business concerns with respect to the receipt of Phase II SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards; and

(iii) begin evaluating, each fiscal year, whether each small business concern that received a Phase I SBIR or STTR award from the agency meets the minimum performance standard established under clause (ii).

(B) CONSEQUENCE OF FAILURE TO MEET MINIMUM COMMERCIALIZATION RATE.—If the head of a Federal agency determines that a small business concern that received a Phase I SBIR or STTR award from the agency is not meeting the minimum performance standard established under subparagraph (A)(ii), such concern may not participate in Phase I (or Phase II if under the authority of subsection (cc)) of the SBIR or STTR program of that agency during the 1-year period beginning on the date on which such determination is made.

(2) PROGRESS TO PHASE III SUCCESS.—

⁶²⁸ New subsection 9(qq) added by § 5165 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1859).

(A) ESTABLISHMENT OF SYSTEM AND MINIMUM COMMERCIALIZATION RATE.—Not later than 2 years after the date of enactment of this subsection, the head of each Federal agency participating in the SBIR or STTR program shall

§ 9(qq)(2)(A)(ii)

to

§ 9(rr)

(i) establish a system to measure, where appropriate, the success of small business concerns with respect to the receipt of Phase III SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards;

(ii) establish a minimum performance standard for small business concerns with respect to the receipt of Phase III SBIR or STTR awards for projects that have received Phase I SBIR or STTR awards; and

(iii) begin evaluating, each fiscal year, whether each small business concern that received a Phase I SBIR or STTR award from the agency meets the minimum performance standard established under clause (ii).

(B) CONSEQUENCE OF FAILURE TO MEET MINIMUM COMMERCIALIZATION RATE.—If the head of a Federal agency determines that a small business concern that received a Phase I SBIR or STTR award from the agency is not meeting the minimum performance standard established under subparagraph (A)(ii), such concern may not participate in Phase I (or Phase II if under the authority of subsection (cc)) of the SBIR or STTR program of that agency during the 1-year period beginning on the date on which such determination is made.

(3) ADMINISTRATION OVERSIGHT.—

(A) APPROVAL AND PUBLICATION OF SYSTEMS AND MINIMUM PERFORMANCE STANDARDS.—Each system and minimum performance standard established under paragraph (1) or paragraph (2) shall be submitted by the head of the applicable Federal agency to the Administrator and shall be subject to the approval of the Administrator. In making a determination with respect to approval, the Administrator shall ensure that the minimum performance standard exceeds a *de minimis* level. The Administrator shall publish on the Internet Web site of the Administration the systems and minimum performance standards approved.

(B) SUBMISSION OF EVALUATION RESULTS BY AGENCY.—The head of each covered Federal agency shall submit to the Administrator the results of each evaluation conducted under paragraph (1) or paragraph (2).

(4) REQUIREMENT OF NOTICE AND COMMENT.—Each system and minimum performance standard established under paragraph (1) or paragraph (2) and each approval provided by the Administrator under paragraph (3)(A), at least 60 days before becoming effective, shall be preceded by the provision of notice of and an opportunity for public comment on such system, standard, or approval.

§ 9(ss) to
§ 10(a)

(rr)⁶²⁹ PUBLICATION OF CERTAIN INFORMATION.—In order to increase the number of small businesses receiving awards under the SBIR or STTR programs of participating agencies, and to simplify the application process for such awards, the Administrator shall establish and maintain a public Internet Web site on which the Administrator shall publish such information relating to notice of and application for awards under the SBIR program and STTR program of each participating Federal agency as the Administrator determines appropriate.

§ 9(ss) to
§ 9(tt)(2)

(ss)⁶³⁰ REPORT ON ENHANCEMENT OF MANUFACTURING ACTIVITIES.—Not later than October 1, 2013, and annually thereafter, the head of each Federal agency that makes more than \$50,000,000 in awards under the SBIR and STTR programs of the agency combined shall submit to the Administrator, for inclusion in the annual report required under subsection (b)(7), information that includes—

(1) a description of efforts undertaken by the head of the Federal agency to enhance United States manufacturing activities;

(2) a comprehensive description of the actions undertaken each year by the head of the Federal agency in carrying out the SBIR or STTR program of the agency in support of Executive Order 13329 (69 Fed. Reg. 9181; relating to encouraging innovation in manufacturing);

(3) an assessment of the effectiveness of the actions described in paragraph (2) at enhancing the research and development of United States manufacturing technologies and processes;

(4) a description of efforts by vendors selected to provide discretionary technical assistance under subsection (q)(1) to help SBIR and STTR concerns manufacture in the United States; and

(5) recommendations that the program managers of the SBIR or STTR program of the agency consider appropriate for additional actions to increase the effectiveness of enhancing manufacturing activities.

(tt)⁶³¹ OUTSTANDING REPORTS AND EVALUATIONS.—

(1) IN GENERAL.—Not later than March 30, 2019, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate, the Committee on Small Business of the House of Representatives, and the Committee on Science, Space, and Technology of the House of Representatives—

(A) each report, evaluation, or analysis, as applicable, described in subsection (b)(7), (g)(9), (o)(10), (y)(6)(C), (gg)(6), (jj)(6), and (mm)(6); and

⁶²⁹ New subsection 9(rr) added by § 5166 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1861).

⁶³⁰ New subsection 9(ss) added by § 5167 of P.L. 112-81, approved Dec. 31, 2011 (125 Stat. 1861).

⁶³¹ New subsection 9(tt) added by § 854(a)(5) of P.L. 115-232, approved August 13, 2018 (Stat.).

(B) metrics regarding, and an evaluation of, the authority provided to the National Institutes of Health, the Department of Defense, and the Department of Education under subsection (cc).

§ 9(uu) to
§ 9(uu)(5)(A)

(2) INFORMATION REQUIRED.—Not later than December 31, 2018, the head of each agency that is responsible for carrying out a provision described in subparagraph (A) or (B) of paragraph (1) shall submit to the Administrator any information that is necessary for the Administrator to carry out the responsibilities of the Administrator under that paragraph.

(uu)⁶³² COMMERCIALIZATION ASSISTANCE PILOT PROGRAMS.—

(1) PILOT PROGRAMS IMPLEMENTED.—

(A) IN GENERAL.—Except as provided in subparagraph (B), not later than one year after the date of the enactment of this subsection, a covered agency shall implement a commercialization assistance pilot program, under which an eligible entity may receive a subsequent Phase II SBIR award.

(B) EXCEPTION.—If the Administrator determines that a covered agency has a program that is sufficiently similar to the commercialization assistance pilot program established under this subsection, such covered agency shall not be required to implement a commercialization assistance pilot program under this subsection.

(2) PERCENT OF AGENCY FUNDS.—The head of each covered agency may allocate not more than 5 percent of the funds allocated to the SBIR program of the covered agency for the purpose of making a subsequent Phase II SBIR award under the commercialization assistance pilot program.

(3) TERMINATION.—A commercialization assistance pilot program established under this subsection shall terminate on September 30, 2022.

(4) APPLICATION.—To be selected to receive a subsequent Phase II SBIR award under a commercialization assistance pilot program, an eligible entity shall submit to the covered agency implementing such pilot program an application at such time, in such manner, and containing such information as the covered agency may require, including—

(A) an updated Phase II commercialization plan; and

(B) the source and amount of the matching funding required under paragraph (5).

(5) MATCHING FUNDING.—

⁶³² New subsection 9(uu) added by § 860 of P.L. 115-232, approved August 13, 2018 (Stat.).

(A) IN GENERAL.—The Administrator shall require, as a condition of any subsequent Phase II SBIR award made to an eligible entity under this subsection, that a matching amount (excluding any fees collected by the eligible entity receiving such award) equal to the amount of such award be provided from an eligible third-party investor.

§ 9(uu)(5)(B) to
§ 9(uu)(9)

(B) INELIGIBLE SOURCES.—An eligible entity may not use funding from ineligible sources to meet the matching requirement of subparagraph (A).

(6) AWARD.—A subsequent Phase II SBIR award made to an eligible entity under this subsection—

(A) may not exceed the limitation described under subsection (aa) (1); and

(B) shall be disbursed during Phase II.

(7) USE OF FUNDS.—The funds awarded to an eligible entity under this subsection may only be used for research and development activities that build on eligible entity's Phase II program and ensure the research funded under such Phase II is rapidly progressing towards commercialization.

(8) SELECTION.—In selecting eligible entities to participate in a commercialization assistance pilot program under this subsection, the head of a covered agency shall consider—

(A) the extent to which such award could aid the eligible entity in commercializing the research funded under the eligible entity's Phase II program;

(B) whether the updated Phase II commercialization plan submitted under paragraph (4) provides a sound approach for establishing technical feasibility that could lead to commercialization of such research;

(C) whether the proposed activities to be conducted under such updated Phase II commercialization plan further improve the likelihood that such research will provide societal benefits;

(D) whether the small business concern has progressed satisfactorily in Phase II to justify receipt of a subsequent Phase II SBIR award;

(E) the expectations of the eligible third-party investor that provides matching funding under paragraph (5); and

(F) the likelihood that the proposed activities to be conducted under such updated Phase II commercialization plan using matching funding provided by such eligible third-party investor will lead to commercial and societal benefit.

§ 9(uu)(9)(A) to § 9(uu)(10)(C) (9) EVALUATION REPORT.—Not later than 6 years After the date of enactment of this subsection, the Comptroller General of the United States shall submit to the Committee on Science, Space, and Technology and the Committee on Small Business of the House of Representatives, and the Committee on Small Business and Entrepreneurship of the Senate, a report including—

(A) a summary of the activities of commercialization assistance pilot programs carried out under this subsection;

(B) a detailed compilation of results achieved by such commercialization assistance pilot programs, including the number of eligible entities that received awards under such programs;

(C) the rate at which each eligible entity that received a subsequent Phase II SBIR award under this subsection commercialized research of the recipient;

(D) the growth in employment and revenue of eligible entities that is attributable to participation in a commercialization assistance pilot program;

(E) a comparison of commercialization success of eligible entities participating in a commercialization assistance pilot program with recipients of an additional Phase II SBIR award under subsection (ff);

(F) demographic information, such as ethnicity and geographic location, of eligible entities participating in a commercialization assistance pilot program;

(G) an accounting of the funds used at each covered agency that implements a commercialization assistance pilot program under this subsection;

(H) the amount of matching funding provided by eligible third-party investors, set forth separately by source of funding;

(I) an analysis of the effectiveness of the commercialization assistance pilot program implemented by each covered agency; and

(J) recommendations for improvements to the commercialization assistance pilot programs.

(10) DEFINITIONS.—For purposes of this subsection:

(A) COVERED AGENCY.—The term “covered agency” means a Federal agency required to have an SBIR program.

“Covered agency.”

(B) **ELIGIBLE ENTITY.**—The term “eligible entity” means a small business concern that has received a Phase II award under an SBIR program and an additional Phase II SBIR award under subsection (ff) from the covered agency to which such small business concern is applying for a subsequent Phase II SBIR award. “Eligible entity.”

(C) **ELIGIBLE THIRD-PARTY INVESTOR.**—The term “eligible third-party investor” means a small business concern other than an eligible entity, a venture capital firm, an individual investor, a non-SBIR Federal, State or local government or any combination thereof. § 9(uu)(10)(D) to § 10(a) party investor.

(D) **INELIGIBLE SOURCES.**—The term “ineligible sources” means the following: “Ineligible sources.”

(i) The eligible entity’s internal research and development funds.

(ii) Funding in forms other than cash, such as in-kind or other intangible assets.

(iii) Funding from the owners of the eligible entity, or the family members or affiliates of such owners.

(iv) Funding attained through loans or other forms of debt obligations.

(E) **SUBSEQUENT PHASE II SBIR AWARD.**—The term “subsequent Phase II SBIR award” means an award granted to an eligible entity under this subsection to carry out further commercialization activities for research conducted pursuant to an SBIR program. “Subsequent Phase II SBIR award.”

§ 10.⁶³³ (a) The Administration shall, as soon as practicable each fiscal⁶³⁴ year make a comprehensive annual report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal⁶³⁵ year. Such report shall contain recommendations for strengthening or Reports. 15 USC 639.

⁶³³Former § 10(a) was rewritten and the reporting requirement changed from semiannual to annual by § 5(a)(1) of PL 87-305, approved Sept. 26, 1961 (75 Stat. 666). Additional reporting requirements were imposed by § 7 of PL 93-237, approved Jan. 2, 1974 (87 Stat. 1023), which added the second and third sentences and made other insubstantial changes to § 10(a).

⁶³⁴“Fiscal” year substituted for “calendar” year by § 3(4) of PL 93-608, an Act to discontinue or modify certain reporting requirements of law, approved Jan. 2, 1975 (88 Stat. 1967).

⁶³⁵“Senate Select Committee on Small Business” added by § 203 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). The Senate deleted the word “Select” by S. Res. 101, 97th Cong., 1st Sess., Mar. 25, 1981.

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§ 10(d)

improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are and for whom financing is arranged by the Administration, together with the amounts involved. With respect to minority small business concerns, the report shall include the proportion of loans and other assistance under this Act provided to such concerns, the goals of the Administration for the next fiscal year with respect to such concerns, and recommendations for improving assistance to minority small business concerns under this Act.⁶³⁶

(b)⁶³⁷ [Repealed.]

(c)⁶³⁸ [Repealed].

⁶³⁶Last sentence added by § 211 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). The requirement of the report of the progress in liquidating the assets and winding up the affairs of the RFC repealed by § 3(4) of PL 93-608, an Act to discontinue or modify certain reporting requirements of law, approved Jan. 2, 1975 (88 Stat. 1967).

⁶³⁷ Subsection 10(b) repealed by § 7 of P.L. 115-189, approved June 21, 2018 (Stat.). “Committee on Small Business of the House of Representatives” substituted for “House Select Committee to Conduct a Study and Investigation of the Problems of Small Business” by § 204 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). The phrase “as soon as practicable each fiscal year” substituted for “on December 31 of each year” by § 3(5) of PL 93-608, an Act to discontinue or modify certain reporting requirements of law, approved Jan. 2, 1975 (88 Stat. 1967). The reporting requirement to § 10(b) was changed from semiannual to annual by § 5(a)(2) of PL 87-305, approved Sept. 26, 1961 (75 Stat. 667). The words “this Act” through the end of § 10(b) added by § 1904 of PL 97-35, approved Aug. 13, 1981 (95 Stat. 357). This change also deleted prior language concerning reporting requirements for former § 7(l) loans, which had been added by PL 95-315, the Small Business Energy Loan Act of 1978, approved July 4, 1978 (92 Stat. 379). Text of former section 10(b) is reprinted below:

The Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business, and to the Committee on Small Business of the House of Representatives, as soon as practicable each fiscal year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids. Such report shall contain the number and amount of loans, the number of applications, the total amount applied for, and the number and amount of defaults for each type of equipment or service for which loans are authorized by this Act. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 7(a) and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.

⁶³⁸Subsection 10(c) repealed by § 1091 of P.L. 104-66, approved Dec. 21, 1995 (109 Stat. 722). Text of former § 10(c) is set out below:

- (1) The Attorney General is directed to make, or direct the Federal Trade Commission to make for him, surveys of any activity of the Government which may affect small business, for the purpose of determining any factors which may tend to eliminate competition, create or strengthen monopolies, promote undue concentration of economic power, or otherwise injure small business.
- (2) The Attorney General shall submit to the Congress, the Senate Select Committee on Small Business and the President, at such times as he deems desirable, but not less than once every year, reports setting forth the results of such surveys and including such recommendations as he may deem desirable.

(d) For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives⁶³⁹ showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

§ 10(e) to
§ 10(f)

(e) The Administration and the Inspector General of the Administration⁶⁴⁰ shall retain all correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives,⁶⁴¹ or their duly authorized representatives.

Maintenance of records available to Small Business Committees.

(2)⁶⁴² The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of section 7(j) or 8(a). Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the disposition of the request⁶⁴³ by such office.

(f) To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration

⁶³⁹Monthly reports by Department of Defense changed to annual report by § 241(1) of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2826).

⁶⁴⁰The Inspector General was added by § 406(e)(1) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3876).

⁶⁴¹“Committee on Small Business of the House of Representatives” substituted for “House Select Committee to Conduct a Study and Investigation of the Problems of Small Business” by § 207 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553).

⁶⁴²Paragraph 10(e)(2) was added by § 406(e)(2) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3876). There is no paragraph 10(e)(1).

⁶⁴³“Request” substituted for “matter” by § 15 of PL 101-37, approved June 15, 1989 (103 Stat. 73).

in the formulation by such department or agency of policies affecting small-business concerns, in order to insure that small-business interests will be recognized, protected, and preserved. This subsection shall not require any department or agency to consult or cooperate with the Administration in any case where the head of such department or agency determines that such consultation or cooperation would unduly delay action which must be taken by such department or agency to protect the national interest in an emergency.

§ 10(g) to
§ 11(b)

(g)⁶⁴⁴ The Administration shall transmit, not later than December 31 of each year, to the Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives⁶⁴⁵ a sealed report with respect to—

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Congress.

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

(h)⁶⁴⁶ The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid; (2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums; (3) the number and total dollar amount of pools formed; (4) the number and total dollar amount of loans in each pool; (5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable; (6) the number, face value, interest rate, and terms of the trust certificates issued for each pool; (7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and (8) an analysis of the information reported in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.

Report to
Congressional
Committees.

§ 11. (a) The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this Act. 15 USC 640.

⁶⁴⁴Added by § 4 of PL 93-386, approved Aug. 23, 1974 (88 Stat. 742).

⁶⁴⁵“Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives” substituted for “Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives” by § 208 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553). The Senate deleted the word “Select” by S. Res. 101, 97th Cong., 1st Sess., Mar. 25, 1981.

⁶⁴⁶Subsection 10(h) added by § 4 of PL 98-352, Small Business Secondary Market Improvements Act of 1984, approved July 10, 1984 (98 Stat. 329).

(b) No act or omission to act pursuant to this Act which occurs while this Act is in effect, requested by the President pursuant to a voluntary agreement or program approved under section (a) of this section and found by the President to be in the public interest as contributing to the national defense, shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act of the United States. A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

Defense production pools; antitrust exemption.

(c) The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.⁶⁴⁷

(d) Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

§ 12. The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

Transfer of small-business functions. 15 USC 641.

§ 13. No loan shall be made or equipment, facilities, or services furnished by the Administration under this Act to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional service, any person, who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this Act; and (3) furnish the names of lending

Listing of agents and attorneys. 15 USC 642.

⁶⁴⁷The President delegated this authority to the SBA Administrator by Exec. Order No. 10493, 3 C.F.R. 974 (1949-1953 compilation), 18 Fed. Reg. 6583 (1958).

§ 14 to
§ 15(a)

institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

§ 14. To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct cost incurred by the Administration.

Charges for Government owned property. 15 USC 643.

§ 15.⁶⁴⁸(a) SMALL BUSINESS PROCUREMENTS.—

Small business procurements. 15 USC 644.

⁶⁴⁸Section 502 of PL 95-89, approved Aug. 4, 1977 (91 Stat. 553), redesignated the first subsection as "(a)" and added subsections (b), (c), (d), (e), and (f). Subsection 15(a) completely rewritten by § 1801 of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2648). Text of former subsection 15(a) is reprinted below:

To effectuate the purposes of this Act, small business concerns within the meaning of this Act shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small business concerns, or (4) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small business concerns; but nothing contained in this Act shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, (4) why construction cannot be procured as separate discrete projects, or (5) why the agency has determined that the bundled contract (as defined in section 3(o)) is necessary and justified. The thirty day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration in accordance with the definition of a "United States industry" under the North American Industry Classification System, as established by the Office of Management and Budget, except that the Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire domestic market

SMALL BUSINESS ACT

(1) IN GENERAL.—For purposes of this Act, small business concerns shall receive any award or contract if such award or contract is, in the determination of the Administrator and the contracting agency, in the interest of—

(A) maintaining or mobilizing the full productive capacity of the United States;

(B) war or national defense programs; or

(C) assuring that a fair proportion of the total purchase and contracts for goods and services of the Government in each industry category (as defined under paragraph (2)) are awarded to small business concerns.

(2) INDUSTRY CATEGORY DEFINED.—

(A) IN GENERAL.—In this subsection, the term “industry category” means a discrete group of similar goods and services, as determined by the Administrator in accordance with the North American Industry Classification System codes used to establish small business size standards, except that the Administrator shall limit an industry category to a greater extent than provided under the North American Industry Classification System codes if the Administrator receives evidence indicating that further segmentation of the industry category is warranted—

“Industry category.”

(i) due to special capital equipment needs;

(ii) due to special labor requirements;

(iii) due to special geographic requirements, except as provided in subparagraph (B);

(iv) due to unique Federal buying patterns or requirements; or

(v) to recognize a new industry.

(B) EXCEPTION FOR GEOGRAPHIC REQUIREMENTS.—The Administrator may not further segment an industry category based on geographic requirements unless—

(i) the Government typically designates the geographic area where work for contracts for goods or services is to be performed;

for such goods or services and, due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

§ 15(a)(2)(B)(iii) to
§ 15(a)(4)(B)(iv)

(ii) Government purchases comprise the major portion of the entire domestic market for such goods or services; and

(iii) it is unreasonable to expect competition from business concerns located outside of the general geographic area due to the fixed location of facilities, high mobilization costs, or similar economic factors.

(3) DETERMINATIONS WITH RESPECT TO AWARDS OR CONTRACTS.—Determinations made pursuant to paragraph (1) may be made for individual awards or contracts, any part of an award or contract or task order, or for classes of awards or contracts or task orders.

(4) INCREASING PRIME CONTRACTING OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.—

(A) DESCRIPTION OF COVERED PROPOSED PROCUREMENTS.—The requirements of this paragraph shall apply to a proposed procurement that includes in its statement of work goods or services currently being supplied or performed by a small business concern and, as determined by the Administrator—

(i) is in a quantity or of an estimated dollar value which makes the participation of a small business concern as a prime contractor unlikely;

(ii) in the case of a proposed procurement for construction, seeks to bundle or consolidate discrete construction projects; or

(iii) is a solicitation that involves an unnecessary or unjustified bundling of contract requirements.

(B) NOTICE TO PROCUREMENT CENTER REPRESENTATIVES.—With respect to proposed procurements described in subparagraph (A), at least 30 days before issuing a solicitation and concurrent with other processing steps required before issuing the solicitation, the contracting agency shall provide a copy of the proposed procurement to the procurement center representative of the contracting agency (as described in subsection (l)) along with a statement explaining—

(i) why the proposed procurement cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) why delivery schedules cannot be established on a realistic basis that will encourage the participation of small business concerns in a manner consistent with the actual requirements of the Government;

(iii) why the proposed procurement cannot be offered to increase the likelihood of the participation of small business concerns;

(iv) in the case of a proposed procurement for construction, why the proposed procurement cannot be offered as separate discrete projects; or

(v) why the contracting agency has determined that the bundling of contract requirements is necessary and justified.

(C) **ALTERNATIVES TO INCREASE PRIME CONTRACTING OPPORTUNITIES FOR SMALL BUSINESS CONCERNS.**—If the procurement center representative believes that the proposed procurement will make the participation of small business concerns as prime contractors unlikely, the procurement center representative, within 15 days after receiving the statement described in subparagraph (B), shall recommend to the contracting agency alternative procurement methods for increasing prime contracting opportunities for small business concerns.

(D) **FAILURE TO AGREE ON AN ALTERNATIVE PROCUREMENT METHOD.**—If the procurement center representative and the contracting agency fail to agree on an alternative procurement method, the Administrator shall submit the matter to the head of the appropriate department or agency for a determination.

(5) **CONTRACTS FOR SALE OF GOVERNMENT PROPERTY.**—With respect to a contract for the sale of Government property, small business concerns shall receive any such contract if, in the determination of the Administrator and the disposal agency, the award of such contract is in the interest of assuring that a fair proportion of the total sales of Government property be made to small business concerns.

(6) **SALE OF ELECTRICAL POWER OR OTHER PROPERTY.**—Nothing in this subsection shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Federal Government.

(7) **COSTS EXCEEDING FAIR MARKET PRICE.**—A contract may not be awarded under this subsection if the cost of the contract to the awarding agency exceeds a fair market price.

(b) With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 411 of the Small Business Investment Act of 1958 (15 U.S.C. 694 (b)), the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform such work.

(c)⁶⁴⁹ (1) As used in this subsection:

⁶⁴⁹Section 15(c) rewritten by § 133(a) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 3005). For prior version, see § 116 of PL 96-302, approved July 2, 1980 (94 Stat. 833). Sections 133(b) and (c) of PL 100-590 provide:

(b) Report Not later than September 30, 1992, the Government Accountability Office shall prepare a report describing the impact that contracts awarded under section 15(c) of the Small Business Act have had on for-profit

SMALL BUSINESS ACT

(A) The term “Committee” means the Committee for Purchase from the Blind and Other Severely Handicapped established under section 8502 of title 41, United States Code. “Committee.” [41 USC 8502].

(B) The term “public or private organization for the handicapped” has the same meaning given such term in section 3(e). “Public or private organization for the handicapped.”

(C) The term “handicapped individual” has the same meaning given such term in section 3(f). “Handicapped individual.”

(2) (A)⁶⁵⁰ During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed \$40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 8503 of title 41, United States Code. [41 USC 8503].

(3) The Administrator shall monitor and evaluate such participation.

(4) (A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator. Appeal of award.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

small business concerns for fiscal years 1989 through 1991. The report shall be transmitted to the Committees on Small Business of the Senate and the House of Representatives.

(c) Task Force There is established within the Small Business Administration a task force on purchases from the blind and severely handicapped which shall consist of one representative of the small business community appointed by the Administrator of the Small Business Administration and one individual knowledgeable in the affairs of or experienced in the work of sheltered workshops appointed by the Executive Director of the Committee for Purchase from the Blind and Other Severely Handicapped established under the first section of the Act entitled "An Act to create a Committee on Purchases of Blind-made Products, and for other purposes", approved June 25, 1938 (41 U.S.C. 46). The task force shall meet at least once every six months for the purpose of reviewing the award of contracts under section 15(c) of the Small Business Act and recommending to the Small Business Administration such administrative or statutory changes as it deems appropriate.

⁶⁵⁰Paragraph 15(c)(2)(A) amended to apply only to fiscal year 1995 by § 305 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4189).

SMALL BUSINESS ACT

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

Reports to
Office of
Federal
Procurement
Policy.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7)⁶⁵¹ Agencies awarding one or more contracts to such an organization pursuant to the provisions of this subsection may use multiyear contracts, if appropriate.

(d) For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business⁶⁵² concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area set-asides pursuant to [44 C.F.R. Part 331] or any successor policy shall be authorized if the Secretary or his designee specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

Contract
awards,
priority.

(e)⁶⁵³ PROCUREMENT STRATEGIES; CONTRACT BUNDLING—

Procurement
strategies;
contract
bundling.

⁶⁵¹Paragraph 15(c)(7) added by § 305(2) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4190).

⁶⁵²Words “small business” added by § 117(a) of PL 96-302, approved July 2, 1980 (94 Stat. 833).

⁶⁵³New subsection 15(e) added by § 413(a) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2618). Former subsections 15(e) and (f) deleted by § 7101(a) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3367). Text of former subsections 15(e) and (f) is set out below:

- (e) In carrying out small business set-aside programs, departments, agencies, and instrumentalities of the executive branch shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:
 - (1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;
 - (2) concerns which are small business concerns, on the basis of a total set-aside;
 - (3) concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside;
 - (4) concerns which are small business concerns, on the basis of a partial set-aside.

SMALL BUSINESS ACT

(1) IN GENERAL.—To the maximum extent practicable, procurement strategies used by a Federal department or agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers, and each such Federal department or agency shall—

(A)⁶⁵⁴ provide opportunities for the participation of small business concerns during acquisition planning processes and in acquisition plans; and

(B) invite the participation of the appropriate Director of Small and Disadvantaged Business Utilization in acquisition planning processes and provide that Director access to acquisition plans.

(2) MARKET RESEARCH—

(A) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

(B) FACTORS.—For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial. Benefits described in the preceding sentence may include the following:

- (i) Cost savings.
- (ii) Quality improvements.
- (iii) Reduction in acquisition cycle times.
- (iv) Better terms and conditions.
- (v) Any other benefits.

(C) REDUCTION OF COSTS NOT DETERMINATIVE.—The reduction of administrative or personnel costs alone shall not be a justification for bundling

(f) After priority is given to the small business concerns specified in subsection (e), priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which –

- (1) are not eligible under subsection (e);
- (2) are not small business concerns; and
- (3) will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.

⁶⁵⁴ Subparagraphs 15(e)(1)(A) and (B) added by § 1623 of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2069).

SMALL BUSINESS ACT

of contract requirements unless the cost savings are expected to be substantial in relation to the dollar value of the procurement requirements to be consolidated.

(3)⁶⁵⁵ STRATEGY SPECIFICATIONS.—If the head of a contracting agency determines that an acquisition plan for a procurement involves a substantial bundling of contract requirements, the head of a contracting agency shall publish a notice on a public website that such determination has been made not later than 7 days after making such determination. Any solicitation for a procurement related to the acquisition plan may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the head of a contracting agency shall publish a justification for the determination, which shall include the following information:

(A) The specific benefits anticipated to be derived from the bundling of contract requirements and a determination that such benefits justify the bundling.

(B) An identification of any alternative contracting approaches that would involve a lesser degree of bundling of contract requirements.

(C) An assessment of—

(i) the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements; and

(ii) the specific actions designed to maximize participation of small business concerns as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements.

(4)⁶⁵⁶ CONTRACT TEAMING.—

Contract
teaming.

⁶⁵⁵ Paragraph 15(e)(3) rewritten by § 863(a) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 926). Text of former paragraph 15(e)(3) reprinted below:

(3) STRATEGY SPECIFICATIONS.—If the head of a contracting agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall—

(A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

(B) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

(C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

⁶⁵⁶ Paragraph 15(e)(4) rewritten by § 867(a) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 932). Text of former paragraph 15(e)(4) is reprinted below:

(4) CONTRACT TEAMING.—In the case of a solicitation of offers for a bundled contract that is issued by the head of an agency, a small business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small

SMALL BUSINESS ACT

(A) IN GENERAL.—In the case of a solicitation of offers for a bundled or consolidated contract that is issued by the head of an agency, a small business concern that provides for use of a particular team of subcontractors or a joint venture of small business concerns may submit an offer for the performance of the contract.

(B) EVALUATION OF OFFERS.—The head of the agency shall evaluate an offer described in subparagraph (A) in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors or members of the joint venture as follows:

(i) TEAMS.—When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors, the head of the agency shall consider the capabilities and past performance of each first tier subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(ii) JOINT VENTURES.—When evaluating an offer of a joint venture of small business concerns, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(C) STATUS AS A SMALL BUSINESS CONCERN.—Participation of a small business concern in a team or a joint venture under this paragraph shall not affect the status of that concern as a small business concern for any other purpose.

(f)⁶⁵⁷ CONTRACTING PREFERENCE FOR SMALL BUSINESS CONCERNS IN A MAJOR DISASTER AREA.—

(1) DEFINITION.—In this subsection, the term “disaster area” means the area for which the President has declared a major disaster, during the period of the declaration.

“Disaster area.”

(2) CONTRACTING PREFERENCE.—An agency shall provide a contracting preference for a small business concern located in a disaster area if the small business concern will perform the work required under the contract in the disaster area.

(3) CREDIT FOR MEETING CONTRACTING GOALS.—If an agency awards a contract to a small business concern under the circumstances described in paragraph (2), the value of the contract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A).

business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.

⁶⁵⁷ New subsection 15(f) added by § 2108 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 694).

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(g)⁶⁵⁸ (1) GOVERNMENTWIDE GOALS.—

(A) ESTABLISHMENT.—The President shall annually establish Governmentwide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in accordance with the following:

(i) The Governmentwide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year. In meeting this goal, the Government shall ensure the participation of small business concerns from a wide variety of industries and from a broad spectrum of small business concerns within each industry.⁶⁵⁹

(ii) The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iii) The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(iv) The Governmentwide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(v) The Governmentwide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

⁶⁵⁸ Subsection 15(g)(1) completely rewritten by § 1631(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2070). For prior version, see previous edition of this handbook.

⁶⁵⁹ Second sentence added by § 868(a) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 933).

(B)⁶⁶⁰ ACHIEVEMENT OF GOVERNMENTWIDE GOALS.—Each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Small Business Administration and the Administrator for Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the

⁶⁶⁰ Section 868(b) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 933) provides:

(b) SCORECARD PROGRAM FOR EVALUATING FEDERAL AGENCY COMPLIANCE WITH SMALL BUSINESS CONTRACTING GOALS.—

(1) IN GENERAL.—Not later than September 30, 2016, the Administrator of the Small Business Administration, in consultation with the Federal agencies, shall—

(A) develop a methodology for calculating a score to be used to evaluate the compliance of each Federal agency with meeting the goals established pursuant to section 15(g)(1)(B) of the Small Business Act based on each such goal; and

(B) develop a scorecard based on such methodology.

(2) USE OF SCORECARD.—Beginning in fiscal 2017, the Administrator shall establish and carry out a program to use the scorecard developed under paragraph (1) to evaluate whether each Federal agency is creating the maximum practicable opportunities for the award of prime contracts and subcontracts to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, by assigning a score to each Federal agency for the previous fiscal year.

(3) CONTENTS OF SCORECARD.—The scorecard developed under paragraph (1) shall include, for each Federal agency, the following information:

(A) A determination of whether the Federal agency met each of the prime contract goals established pursuant to section 15(g)(1)(B) of the Small Business Act with respect to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(B) A determination of whether the Federal agency met each of the subcontract goals established pursuant to such section with respect to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(C) The number of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women awarded prime contracts in each North American Industry Classification System code during the fiscal year and a comparison to the number of awarded contracts during the prior fiscal year, if available.

(D) The number of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women awarded subcontracts in each North American Industry Classification System code during the fiscal year and a comparison to the number of awarded subcontracts during the prior fiscal year, if available.

(E) Any other factors that the Administrator deems important to achieve the maximum practicable utilization of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(4) WEIGHTED FACTORS.—In using the scorecard to evaluate and assign a score to a Federal agency, the

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annual Governmentwide prime contract goal established by the President pursuant to this paragraph.

(2) (A) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans,⁶⁶¹ by qualified HUBZone small business concerns,⁶⁶² by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency having a value of \$25,000

Administrator shall base—

(A) fifty percent of the score on the dollar value of prime contracts described in paragraph (3)(A); and
 (B) fifty percent of the score on the information provided in subparagraphs (B) through (E) of paragraph (3), weighted in a manner determined by the Administrator to encourage the maximum practicable opportunity for the award of prime contracts and subcontracts to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(5) PUBLICATION.—The scorecard used by the Administrator under this subsection shall be submitted to the President and Congress along with the report submitted under section 15(h)(2) of the Small Business Act.

(6) REPORT.—After the Administrator uses the scorecard for fiscal year 2018 to assign scores to Federal agencies, but not later than March 31, 2019, the Administrator shall submit a report to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate. Such report shall include the following:

(A) A description of any increase in the dollar amount of prime contracts and subcontracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(B) A description of any increase in the dollar amount of prime contracts and subcontracts, and the total number of contracts, awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in each North American Industry Classification System code.

(C) The recommendation of the Administrator on continuing, modifying, expanding, or terminating the program established under this subsection.

(7) GAO REPORT ON SCORECARD METHODOLOGY.—Not later than September 30, 2018, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report that—

(A) evaluates whether the methodology used to calculate a score under this subsection accurately and effectively—

(i) measures the compliance of each Federal agency with meeting the goals established pursuant to section 15(g)(1) (B) of the Small Business Act; and

(ii) encourages Federal agencies to expand opportunities for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to compete for and be awarded Federal procurement contracts across North American Industry Classification System codes; and

(B) if warranted, makes recommendations on how to improve such methodology to improve its accuracy and effectiveness.

(8) DEFINITIONS.—In this subsection:

(A) ADMINISTRATOR.—The term “Administrator” means the Administrator of the Small Business Administration.

(B) FEDERAL AGENCY.—The term “Federal agency” has the meaning given the term “agency” by section 551(1) of title 5, United States Code, but does not include the United States Postal Service or the Government

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or more.⁶⁶³ Such goals shall separately address prime contract awards and subcontract awards for each category of small business covered.⁶⁶⁴

(B) Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, and small business concerns owned and controlled by socially and economically disadvantaged individuals to perform such contracts and to perform subcontracts under such contracts. Contracts excluded from review by procurement center representatives pursuant to subsection (l)(9)(B) shall not be considered when establishing these goals.⁶⁶⁵

(C) Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

Accountability Office.

(C) SCORECARD.—The term “scorecard” shall mean any summary using a rating system to evaluate a Federal agency’s efforts to meet goals established under section 15(g)(1)(B) of the Small Business Act that—

- (i) includes the measures described in paragraph (3); and
- (ii) assigns a score to each Federal agency evaluated.

(D) SMALL BUSINESS ACT DEFINITIONS.—

- (i) IN GENERAL.—The terms “small business concerns”, “small business concerns owned and controlled by service-disabled veterans”, “qualified HUBZone small business concerns”, and “small business concerns owned and controlled by women” have the meanings given such terms under section 3 of the Small Business Act.
- (ii) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term “small business concerns owned and controlled by socially and economically disadvantaged individuals” has the meaning given that term under section 8(d)(3)(C) of the Small Business Act.

⁶⁶¹ References in this paragraph to small business concerns owned and controlled by service-disabled veterans added by § 502(b) of P.L. 106-50, approved August 17, 1999 (113 Stat. 248).

⁶⁶² References to qualified HUBZone small business concerns added by § 603(b)(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

⁶⁶³ Subsection 921(b)(1) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816), removed the \$10,000 value. Subsection 809(a)(1) of PL 100-180, approved Dec. 4, 1987 (101 Stat. 1130), added the \$25,000 value, providing also that the amendment would be in effect until Sept. 30, 1988. Subsection 809(a)(2) of PL 100-180 provided that the \$25,000 value would be stricken effective Oct. 1, 1988. Section 731 of PL 100-656 amended subsection 809(a)(2) of PL 100-180 by extending the date on which the \$25,000 value would be removed until Oct. 1, 1989.

⁶⁶⁴ Last sentence added by § 1631(b)(1) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2071).

⁶⁶⁵ Last sentence added by § 1811(b) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2651).

(D)⁶⁶⁶ After establishing goals under this paragraph for a fiscal year, the head of each Federal agency shall develop a plan for achieving such goals at both the prime contract and the subcontract level, which shall apportion responsibilities among the agency's acquisition executives and officials. In establishing goals under this paragraph, the head of each Federal agency shall make a consistent effort to annually expand participation by small business concerns from each industry category in procurement contracts and subcontracts of such agency, including participation by small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. § 15(g)(2)(E) to § 15(h)

(E) The head of each Federal agency, in attempting to attain expanded participation under subparagraph (D)⁶⁶⁷, shall consider—

- (i) contracts awarded as the result of unrestricted competition; and
- (ii) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).⁶⁶⁸

(F)⁶⁶⁹ (i) Each procurement employee or program manager described in clause (ii) shall communicate to the subordinates of the procurement employee or program manager the importance of achieving small business goals.

(ii) A procurement employee or program manager described in this clause is a senior procurement executive, senior program manager, or

⁶⁶⁶Subparagraph 15(g)(2)(D) rewritten by § 1631(b)(2) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2071). Text of former 15(g)(2)(D) is reprinted below:

For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals and by small business concerns owned and controlled by women.

Reference to small business concerns owned and controlled by women added by § 7106(a)(2)(C) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3375).

⁶⁶⁷ Reference to “expanded participation under subparagraph (D)” added by § 1631(b)(3) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2071).

⁶⁶⁸Section 221 of PL 95-507 established the small business set-asides for procurement contracts having a value of \$10,000 or more. Subsection 921(d)(2) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816), removed the \$10,000 threshold and added the last two sentences in § 15(g).

⁶⁶⁹ Paragraph 15(g)(2) rewritten to break up text, with no language changes, by § 1333 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2542). New subparagraph 15(g)(2)(F) added by § 1333(7) of P.L. 111-240.

Director of Small and Disadvantaged Business Utilization of a Federal agency having contracting authority.

(3)⁶⁷⁰ First tier subcontracts that are awarded by Management and Operating contractors sponsored by the Department of Energy to small business concerns, small businesses concerns owned and controlled by service disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall be considered toward the annually established agency and Government-
§ 15(h)(1) to or procurement contracts awarded.
§ 15(h)(2)(E)(i)

(h)⁶⁷¹ REPORTING ON GOALS FOR PROCUREMENT CONTRACTS AWARDED TO SMALL BUSINESS CONCERNS.—

Reports to SBA.

(1) AGENCY REPORTS.—At the conclusion of each fiscal year, the head of each Federal agency shall submit to the Administrator a report describing—

(A) the extent of the participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in the procurement contracts of such agency during the fiscal year;

(B) whether the agency achieved the goals established for the agency under subsection (g)(2) with respect to such fiscal year; and

(C) any justifications for a failure to achieve such goals.

(D)⁶⁷² a remediation plan with proposed new practices to better meet such goals, including analysis of factors leading to any failure to achieve such goals.

(2) REPORTS BY ADMINISTRATOR.—Not later than 60 days after receiving a report from each Federal agency under paragraph (1) with respect to a fiscal year, the Administrator shall submit to the President and Congress, and to make available on a public Web site, a report that includes—

Reports by SBA.

(A) a copy of each report submitted to the Administrator under paragraph (1);

⁶⁷⁰ New paragraph 15(g)(3) added by § 318 of Title III of P.L. 113-76, approved Jan. 17, 2014 (128 Stat. 178).

⁶⁷¹ Subsection 15(h) completely rewritten by § 1632 of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2073). For previous language, see earlier edition of this handbook.

⁶⁷² New subparagraph 15(h)(1)(D) added by § 1613 of P.L. 113-66, approved Dec. 26, 2013 (127 Stat. 948).

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(B) a determination of whether each goal established by the President under subsection (g)(1) for such fiscal year was achieved;

(C) a determination of whether each goal established by the head of a Federal agency under subsection (g)(2) for such fiscal year was achieved;

(D) the reasons for any failure to achieve a goal established under paragraph (1) or (2) of subsection (g) for such fiscal year and a description of actions planned by the applicable agency to address such failure, including the Administrator's comments and recommendations on the proposed remediation plan; and

(E) for the Federal Government and each Federal agency, an analysis of the number and dollar amount of prime contracts awarded during such fiscal year—
§ 15(h)(2)(E)(i)(I) to § 15(h)(2)(E)(ii)(VI)

(i) small business concerns—
(I) in the aggregate;
(II) through sole source contracts;
(III) through competitions restricted to small business concerns;
(IV) through unrestricted competition;
(V)⁶⁷³ that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns for purposes of the initial contract; and

(VI) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(ii) small business concerns owned and controlled by service-disabled veterans—

(I) in the aggregate;

⁶⁷³ New subclauses (V) and (VI) added by § 1703(a)(1)(B) of P.L. 115-91, approved Dec. 12, 2017 (131 Stat. 1804). The same language was added in clauses (ii) – (iv). Section 1703(b) of P.L. 115-91 provides:

(b) EFFECTIVE DATE.—The Administrator of the Small Business Administration shall be required to report on the information required by clauses (i)(V), (ii)(VI), (iii)(VII), (iv)(VII), (v)(VI), (vi)(VI), (vii)(VI), and (viii)(IX) of section 15(h)(2)(E) beginning on the date that such information is available in the Federal Procurement Data Stem, the System for Award Management, or any new or successor system.

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- (II) through sole source contracts;
- (III) through competitions restricted to small business concerns;
- (IV) through competitions restricted to small business concerns owned and controlled by service-disabled veterans;

§ 15(h)(2)(E)(ii)(VII) to was awarded and as a result of the purchase, would no longer be deemed to be
§ 15(h)(2)(E)(iv)(IV) concerns owned and controlled by service-disabled veterans for purposes of the initial contract; and

(VII) that were awarded using a procurement method that restricted competition to qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(iii) qualified HUBZone small business concerns—

- (I) in the aggregate;
- (II) through sole source contracts;
- (III) through competitions restricted to small business concerns;
- (IV) through competitions restricted to qualified HUBZone small business concerns; and
- (V) through unrestricted competition where a price evaluation preference was used;
- (VI) through unrestricted competition where a price evaluation preference was not used;

(VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be qualified HUBZone small business concerns for purposes of the initial contract; and

(VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and

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economically disadvantaged individuals, small business concerns owned and controlled by women, or a subset of any such concerns;

(iv) small business concerns owned and controlled by socially and economically disadvantaged individuals—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals; § 15(h)(2)(E)(iv)(V) to § 15(h)(2)(E)(vi)(II)

(V) through unrestricted competition;

(VI) by reason of that concern's certification as a small business concern owned and controlled by socially and economically disadvantaged individuals;

(VII) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by socially and economically disadvantaged individuals for purposes of the initial contract; and

(VIII) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by women, or a subset of any such concerns;

(v) small business concerns owned by an Indian tribe (as such term is defined in section 8(a)(13)) other than an Alaska Native Corporation—

(I) in the aggregate;

(II) through sole source contracts;

(III) through competitions restricted to small business concerns;

(IV) through competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

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(V) through unrestricted competition; and

(VI)⁶⁷⁴ that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Indian tribe other than an Alaska Native Corporation for purposes of the initial contract;

Organization—
§ 15(h)(2)(E)(vi)(III) to
§ 15(h)(2)(E)(viii)(II)

(vi) small business concerns owned by a Native Hawaiian

(I) in the aggregate;

(II) through sole source contracts;

business concerns;

(III) through competitions restricted to small

business concerns owned and controlled by socially and economically disadvantaged individuals;

(IV) through competitions restricted to small

(V) through unrestricted competition; and

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by a Native Hawaiian Organization for purposes of the initial contract;

Corporation—

(vii) small business concerns owned by an Alaska Native

(I) in the aggregate;

(II) through sole source contracts;

business concerns;

(III) through competitions restricted to small

business concerns owned and controlled by socially and economically disadvantaged individuals;

(IV) through competitions restricted to small

(V) through unrestricted competition;

⁶⁷⁴ New subclause 15(h)(2)(E)(v)(VI) added by § 1703(a)(5)(C) of P.L. 115-91, approved Dec. 12, 2017 (131 Stat. 1805). The same language was added to clauses (vi) and (vii).

(VI) that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned by an Alaska Native Corporation for purposes of the initial contract;

(viii) small business concerns owned and controlled by women—

(I) in the aggregate;
(II) through competitions restricted to small business concerns; § 15(h)(2)(E)(viii)(III) to § 15(h)(3)

(III) through competitions restricted using the authority under section 8(m)(2);

(IV) through competitions restricted using the authority under section 8(m)(2) and in which the waiver authority under section 8(m)(3) was used;

(V)⁶⁷⁵ through sole source contracts awarded using the authority under subsection 8(m)(7);

(VI) through sole source contracts awarded using the authority under section 8(m)(8);

(VII) by industry for contracts described in subclause (III), (IV), (V), or (VI);

(VIII) through unrestricted competition;

(IX)⁶⁷⁶ that were purchased by another entity after the initial contract was awarded and as a result of the purchase, would no longer be deemed to be small business concerns owned and controlled by women for purposes of the initial contract; and

(X) that were awarded using a procurement method that restricted competition to small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, or a subset of any such concerns; and

⁶⁷⁵ New subclauses (V) – (VII) added by § 825(b)(3) of P.L. 113-291, approved Dec. 19, 2014 (126 Stat. 3438).

⁶⁷⁶ New subclauses (IX) and (X) added by § 1703(a)(8)(C) of P.L. 115-91, approved Dec. 12, 2017 (131 Stat. 1805).

(F) for the Federal government, the number, dollar amount, and distribution with respect to the North American Industry Classification System of subcontracts awarded during such fiscal year to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, provided that such information is publicly available through data systems operated pursuant to the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), or otherwise available as provided in paragraph (3).

(3)⁶⁷⁷ PROCUREMENT DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—

(i) IN GENERAL.—To assist in the implementation of this section, The Administrator shall have access to information collected through the Federal Procurement Data System, Federal Subcontracting Reporting System, or any new or successor system.

(ii) GSA REPORT.—On the date that the Administrator makes available the report required under paragraph (2), the Administrator of the General Services Administration shall submit to the President and Congress, and shall make available on a public website, a report in the same form and manner, and including the same information, as the report required under paragraph (2). The report shall include all procurements made for the period covered by the report and may not exclude any contract awarded.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administrator, procurement information collected through agency data collection sources in existence at the time of the request. Contracting agencies shall not be required to establish new data collection systems to provide such data.

(i) Nothing in this Act or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

⁶⁷⁷ Paragraph 15(h)(3) completely rewritten by § 1802 of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2650). Text of former paragraph 15 (h)(3) is reprinted below:

ACCESS TO DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System, Federal Subcontracting Reporting System, or any new or successor system.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through agency data collection sources in existence at the time of the request. Contracting agencies shall not be required to establish new data collections systems to provide such data.

(j)⁶⁷⁸ (1) Each contract for the purchase of goods and services that has an anticipated value greater than the micro-purchase threshold, but not greater than the simplified acquisition threshold⁶⁷⁹ shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

§ 15(j)(2) to
§ 15(k)(2)
purchases.

(2) in carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than \$100,000 under the authority of subsection (a) of section 8 of this Act, section 2323 of title 10, United States Code, section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100-656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

[10 USC
2323].
[15 USC
644 note].

(k) There is hereby established in each Federal agency having procurement powers an office to be known as the “Office of Small and Disadvantaged Business Utilization.” The management of each such office shall be vested in an officer or employee of such agency,⁶⁸⁰ with experience serving in any combination of the following roles: program manager, deputy program manager, or assistant program manager for Federal acquisition program; chief engineer, systems engineer, assistant engineer, or product support manager for Federal acquisition program; Federal contracting officer; small business technical advisor; contracts administrator for Federal Government contracts; attorney specializing in Federal procurement law; small business liaison officer; officer or employee who managed Federal Government contracts for a small business; or individual whose primary responsibilities were for the functions and duties of section 8, 15, 31, 36,⁶⁸¹ or 44 of this Act. Such officer or employee—

Office of
Small and
Disadvantaged
Business
Utilization.

⁶⁷⁸Section 15(j) rewritten by § 4004 of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3338). Text of former § 15(j) is set out below:

Each contract for the procurement of goods and services which has an anticipated value not in excess of the small purchase threshold and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever circumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.

⁶⁷⁹ Phrase “greater than \$2,500 but not greater than \$100,000” deleted and current language inserted by § 1702(a) of P.L. 115-91, approved Dec. 12, 2017 (131 Stat. 1803).

⁶⁸⁰ Language following the footnote signal and before paragraph (1) added by § 1691(d) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2088).

⁶⁸¹ Reference to sections 31 and 36 added by § 1812(1) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2652).

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(1) shall be known as the “Director of Small and Disadvantaged Business Utilization” for such agency;

(2) shall be appointed by the head of such agency⁶⁸² to a position that is a Senior Executive Service position (as such term is defined under section 3132(a) of title 5, United States Code), except that, for any agency in which the positions of Chief Acquisitions Officer and senior procurement executive (as such terms are defined under section 44(a) of this Act) are not Senior Executive Service positions, the Director of Small and Disadvantaged business Utilization may be appointed to a position compensated at not less than the minimum rate of basic pay payable for grade GS-15 of the General Schedule under section 5332 of such title (including comparability payments under section 5304 of such title);

§ 15(k)(3) to
§ 15(k)(8)

(3)⁶⁸³ be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, the head of such agency or to the deputy of such head, except that the Director for the Office of the Secretary of Defense shall be responsible only to (including with respect to performance appraisals), and report directly and exclusively to, such Secretary or the Secretary's designee;

(4) shall be responsible for the implementation and execution of the functions and duties under sections 8,⁶⁸⁴ 15, 31, 36, and 44 of this Act which relate to such agency;

(5)⁶⁸⁵ shall identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(6) shall assist small business concerns to obtain payments, late payment interest penalties, or information due to such concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31, United States Code, or any other [31 USC ch. 39]

⁶⁸² Language following the footnote signal added by § 1691(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2087).

⁶⁸³ Parentheticals and word “exclusively” added by § 1691(b) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2087). Exception for the Office of the Secretary of Defense in paragraph (3) added by § 603(1) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3888).

⁶⁸⁴ Phrase “sections 8 and 15” replaced by “sections 8, 15, 31, 36, and 44” throughout this subsection by § 1812(2) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2652).

⁶⁸⁵ Paragraphs 15(k)(5) through (9) renumbered as 15(k)(6) through (10), respectively, and new paragraph 15(k)(5) added by § 413(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2619). Paragraphs 15(k)(5), (6), and (7) renumbered (6), (7), and (8), respectively and new subsection 15(k)(5) added by § 12 of PL 100-496, approved Oct. 17, 1988 (102 Stat. 2465), effective as to contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter beginning more than 90 days after Oct. 17, 1988, per § 14(a). Subsection (k)(5) amended to include specifically protection for subcontractors and suppliers and the references to the FAR by § 806(d) of PL 102-190, approved Dec. 5, 1991 (105 Stat. 1419).

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protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to such Government-wide regulation;

(7) shall have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under sections 8 and 15 of this Act;

(8) shall assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

§ 15(k)(8)(A) to
§ 15(k)(15)

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity; and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to sections 8 and 15 of this Act;

(9) shall cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection;

(10)⁶⁸⁶ shall make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a), sections 8, 15, 31, or 36⁶⁸⁷ of this Act, or section 2323 of title 10, United States Code, which shall be made with due regard to the requirements of subsection (m), and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file; [10 USC 2323].

(11)⁶⁸⁸ shall review and advise such agency on any decision to convert an activity performed by a small business concern to an activity performed by a Federal employee;

(12) shall provide to the Chief Acquisition Officer and senior procurement executive of such agency advice and comments on acquisition strategies, market research, and justifications related to section 44 of this Act;

⁶⁸⁶Subsection 15(k)(9)(redesignated as (10)) added by § 603(4) of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3888).

⁶⁸⁷Phrase “section 8(a)” replaced with “sections 8, 15, 31, or 36” by § 1812(3) of P.L. 114-328, approved Dec. 23, (130 Stat. 2652).

⁶⁸⁸New paragraphs 15(k)(11) through (16) added by § 1691(c) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2087).

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(13) may provide training to small business concerns and contract specialists, except that such training may only be provided to the extent that the training does not interfere with the Director carrying out other responsibilities under this subsection;

(14) shall receive unsolicited proposals and, when appropriate, forward such proposals to personnel of the activity responsible for reviewing such proposals;

§ 15(k)(16) to § 15(k)(18) (15) shall carry out exclusively the duties enumerated in this Act, and shall, as the Director, not hold any other title, position, or responsibility, except as necessary to carry out responsibilities under this subsection; and

(16) shall submit, each fiscal year, to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report describing—

(A) the training provided by the Director under paragraph (13) in the most recently completed fiscal year;

(B) the percentage of the budget of the Director used for such training in the most recently completed fiscal year; and

(C) the percentage of the budget of the Director used for travel in the most recently completed fiscal year;

(D)⁶⁸⁹ any failure of the agency to comply with sections 8, 15, 31, or 36;

(17)⁶⁹⁰ shall, when notified by a small business concern prior to the award of a contract that the small business concern believes that a solicitation, request for proposal, or request for quotation unduly restricts the ability of the small business concern to compete for the award—

(A) submit the notice of the small business concern to the contracting officer and, if necessary, recommend ways in which the solicitation, request for proposal, or request for quotation may be altered to increase the opportunity for competition;

(B) inform the advocate for competition of such agency (as established under section 1705 of title 41, United States Code, or section 2318 of title 10, United States Code) of such notice; and

(C) ensure that the small business concern is aware of other resources and processes available to address unduly restrictive provisions in a solicitation, request for proposal, or request for quotation, even if such resources and processes are

⁶⁸⁹ New subparagraph 15(k)(16)(D) added by § 1812(6) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2652).

⁶⁹⁰ New paragraph 15(k)(17) added by § 870(3) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 939).

provided by such agency, the Administration, the Comptroller General, or a procurement technical assistance program established under chapter 142 of title 10, United States Code;

(18)⁶⁹¹ shall review summary data provided by purchase card issuers of purchases made by the agency greater than the micro-purchase threshold (as defined under section 1902 of title 41, United States Code) and less than the simplified acquisition threshold to ensure that the purchases have been made in compliance with the provisions of this Act and have been properly recorded in the Federal Procurement Data System, if the method of payment is a purchase card issued by the Department of Defense pursuant to section 2784 of title 10, United States Code, or by the head of an executive agency pursuant to section 1909 of title 41, United States Code; § 15(k)(19) to § 15(l)(2)

(19)⁶⁹² shall provide assistance to a small business concern awarded a contract or subcontract under this Act or under title 10 or title 41, United States Code, in finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of such a contract or subcontract; and

(20)⁶⁹³ shall review all subcontracting plans required by paragraph (4) or (5) of section 8(d) to ensure that the plan provides maximum practicable opportunity for small business concerns to participate in the performance of the contract to which the plan applies.

This subsection shall not apply to the Administration.

(1)⁶⁹⁴ PROCUREMENT CENTER REPRESENTATIVES.—

⁶⁹¹ New paragraph 15(k)(18) added by § 1812(5) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2652).

⁶⁹² New paragraph 15(k)(19) added by § 1813(a) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2652).

⁶⁹³ New paragraph 15(k)(20) added by § 1821(b) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2654). Section 1821(c) of P.L. 114-328 provides:

(c) GOOD FAITH COMPLIANCE.—Not later than 270 days after the date of enactment of this title, the Administrator of the Small Business Administration shall provide examples of activities that would be considered a failure to make a good faith effort to comply with the requirements imposed on an entity (other than a small business concern as defined under section 3 of the Small Business Act (15 U.S.C. 632)) that is awarded a prime contract containing the clauses required under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)).

⁶⁹⁴Former subsection “l” renumbered “m” and new subsection “l” inserted by § 403(a) of PL 98-577, approved Oct. 30, 1984 (98 Stat. 3066). Heading added by § 1621(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2067).

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(1)⁶⁹⁵ ASSIGNMENT AND ROLE.—The Administrator shall assign to each major procurement center a procurement center representative with such assistance as may be appropriate.

§ 15(1)(2)(A) to

§ 15(1)(2)(F)

(2) ACTIVITIES.—A procurement center representative is authorized to

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, barriers to small business participation in Federal contracting⁶⁹⁶ previously imposed on goods and services through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such barriers;

(C) review barriers to small business participation in Federal contracting⁶⁹⁷ arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

⁶⁹⁵ Paragraph 15(1)(1) rewritten by § 1621(b) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2067). Text of former paragraph 15(1)(1) is reprinted below:

The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6).

⁶⁹⁶ Phrase “restrictions on competition” replaced with current language by § 1621(c)(2)(A) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2067).

⁶⁹⁷ Phrase “restrictions on competition” replaced with current language by § 1621(c)(3) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2067).

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(D)⁶⁹⁸ review any bundled or consolidated solicitation or contract in accordance with this Act;

(E)⁶⁹⁹ have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification, with such data provided upon request in electronic format, where available; § 15(l)(2)(G) to § 15(l)(4)

(F)⁷⁰⁰ receive unsolicited proposals from small business concerns and transmit such proposals to personnel of the activity responsible for reviewing such proposals, who shall furnish the procurement center representative with information regarding the disposition of any such proposal;

(G) consult with the Director [of] the Office of Small and Disadvantaged Business Utilization of that agency and the agency personnel described in paragraph (7) and (8) of subsection (k) with regard to agency insourcing decisions covered by subsection (k)(11);

(H) be an advocate for the maximum practicable utilization of small business concerns in Federal contracting, including by advocating against the consolidation or bundling of contract requirements when not justified;

⁶⁹⁸Subparagraph 15(l)(2)(D) completely rewritten by § 1621(c)(4) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2067). Text of former subparagraph 15(l)(2)(D) is reprinted below:

obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of supply or service previously procured noncompetitively due to the unavailability of such technical data

The phrase "unrestricted technical data" was changed to "technical data" by § 110(1) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2994).

⁶⁹⁹Subparagraph 15(l)(2)(E) rewritten by § 1621(c)(5) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2067). Text of former 15(l)(2)(E): "have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification." Subsection 15(l)(2)(E) was rewritten by § 110(2) of PL 100-590. Prior version limited access to unclassified procurement records, see § 403(a) of PL 98-577, approved Oct. 30, 1984 (98 Stat. 3066).

⁷⁰⁰ Subparagraphs 15(l)(2)(F) and (G) rewritten and subparagraphs (H) and (I) added by § 1621(c)(6) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2067). Text of former 15(l)(2)(F) and (G) is reprinted below:

(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

(I)⁷⁰¹ assist small business concerns with finding resources for education and training on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract; and

(J) carry out any other responsibility assigned by the Administrator.

(3)⁷⁰² APPEALS.—A procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a).

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other § 15(l)(5) to § 15(l)(5)(C)(i) may be authorized from time to time. The sole duties of such advisers shall be to assist the procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6).⁷⁰³

(5)⁷⁰⁴ POSITION REQUIREMENTS.—

(A) IN GENERAL.—A procurement center representative assigned under this subsection shall—

(i) be a full-time employee of the Administration;

⁷⁰¹ Subparagraph 15(l)(2)(I) redesignated as (J) and new subparagraph (I) added by § 1813(d) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2653).

⁷⁰² Heading added and word “breakout” deleted by § 1621(d) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2068). Subsection 15(l)(3) was rewritten by § 110(3) of PL 100-590.

⁷⁰³ Phrase “breakout procurement center representative” changed to “procurement center representative” by § 1621(e) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2068). Because of the renumbering of the paragraphs in § 15(k) of the Act by § 12 of PL 100-496, approved Oct. 17, 1988 (102 Stat. 2465), this reference should be to § 15(k)(7).

⁷⁰⁴ Heading added and subparagraphs 15(l)(5)(A) rewritten by § 1621(f) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2068). Subparagraph (B) was deleted. Text of former (A) and (B) reprinted below:

- (A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—
- (i) full time employees of the Administration; and
 - (ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.
- (B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

(ii) be fully qualified, technically trained, and familiar with the goods and services procured by the major procurement center to which that representative is assigned; and

(iii)⁷⁰⁵ have the certification described in subparagraph (C).

(B)⁷⁰⁶ COMPENSATION.—The Administrator shall establish personnel positions for procurement representatives and advisers assigned under this subsection which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(C)⁷⁰⁷ CERTIFICATION REQUIREMENTS.—

(i) IN GENERAL.—Consistent with the requirements of § 15(l)(5)(C)(ii) to clause (ii), a procurement center representative shall have a Level III Federal Acquisition Certification in Contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on or before January 3, 2013, may continue to serve in that position for a period of 5 years without the required certification.

(ii) DELAY OF CERTIFICATION REQUIREMENTS.—

(I) TIMING.—The certification described in clause (i) is not required for any person serving as a procurement center representative until the date that is one calendar year after the date such person is appointed as a procurement center representative.

(II) APPLICATION.—The requirements of subclause (I) shall—

(aa) be included in any initial job posting for the position of a procurement center representative; and

(bb) apply to any person appointed as a procurement center representative after January 3, 2013.

⁷⁰⁵ Clause 15(l)(5)(A)(iii) rewritten by § 865(c)(1) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 928). Text of former clause (iii) is reprinted below:

(iii) have a Level III Federal Acquisition Certification in contracting (or any successor certification) or the equivalent Department of Defense certification, except that any person serving in such a position on the date of enactment of this clause may continue to serve in that position for a period of 5 years without the required certification.

⁷⁰⁶ Subparagraph 15(l)(5)(C) redesignated as (B) and heading added by § 1621(f)(3) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2068).

⁷⁰⁷ New subparagraph 15(l)(5)(C) added by § 865(c)(2) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 928).

(6) MAJOR PROCUREMENT CENTER DEFINED.—For purposes of this subsection, the term “major procurement center” means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of goods or services, including goods or services that are commercially available.⁷⁰⁸

“Major procurement center.”

(7)⁷⁰⁹ TRAINING.—

(A) AUTHORIZATION.—At such times as the Administrator deems appropriate, the breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B)⁷¹⁰ LIMITATION.—A procurement center representative may provide training under subparagraph (A) only to the extent that the training does not interfere with the representative carrying out other activities under this subsection.

(8)⁷¹¹ ANNUAL BRIEFING AND REPORT.—A procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by such representative.

(9)⁷¹² SCOPE OF REVIEW.—The Administrator—

[10 USC 2323].

(A) may not limit the scope of review by the procurement center representative for any solicitation of a contract or task order without regard to whether the contract or task order or part of the contract or task order is set aside for small business concerns, whether 1 or more contracts or task order awards are reserved for small business

⁷⁰⁸Heading added and phrase “other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative” replaced with current language by § 1621(g) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2068). Subsection 15(l)(6) was rewritten by § 110(4) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2994). Prior paragraph 15(l)(6), read:

For purposes of this subsection, the term “major procurement center” means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least \$150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator.

⁷⁰⁹Subsection 15(l)(7) added by § 110(5) of PL 100-590, approved Nov. 3, 1988 (102 Stat. 2995).

⁷¹⁰ New subparagraph 15(l)(7)(B) added by § 1621(h)(4) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2069).

⁷¹¹ This language, formerly § 15(l)(7)(B), redesignated as 15(l)(8) by § 1621(h)(3) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2069).

⁷¹² New paragraph 15(l)(9) added by § 1811(a) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2651).

§ 15(l)(8) to
§ 15(m)(1)

concerns under a multiple award contract, or whether or not the solicitation would result in a bundled or consolidated contract (as defined in subsection (s)) or a bundled or consolidated task order; and

(B) shall, unless the contracting agency requests a review, limit the scope of review by the procurement center representative for any solicitation of a contract or task order if such solicitation is awarded by or for the Department of Defense and—

(i) is conducted pursuant to section 22 of the Arms Export Control Act (22 U.S.C. 2762);

(ii) is a humanitarian operation as defined in section 401(e) of title 10, United States Code;

(iii) is for a contingency operation, as defined in section 101(a)(13) of title 10, United States Code;

(iv) is to be awarded pursuant to an agreement with the government of a foreign country in which Armed Forces of the United States are deployed; or

(v) both the place of award and the place of performance are outside of the United States and its territories.

§ 15(m)(1)(A) to
§ 15(o)

(m)⁷¹³ (1) Each agency subject to the requirements of section 2323 of title 10, United States Code, shall, when implementing such requirements—

(A) establish policies and procedures that insure that there will be no reduction in the number of dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 8(a).

(2) All procurement center representatives (including those referred to in subsection (k)(6)),⁷¹⁴ in addition to such other duties as may be assigned by the Administrator, shall—

(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

⁷¹³Section 15(m) rewritten by § 601 of PL 100-656, approved Nov. 15, 1988 (102 Stat. 3887). For prior version, see § 233 of PL 95-507, approved Oct. 24, 1978 (97 Stat. 1757) as renumbered by § 403(a) of PL 98-577 (98 Stat. 3066).

⁷¹⁴Because of the renumbering of the paragraphs in § 15(k) of the Act by § 12 of PL 100-496, approved Oct. 17, 1988 (102 Stat. 2465), this reference should be to § 15(k)(7).

(B) report to their immediate supervisors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 2323 of title 10, United States Code.

(n) For purposes of this section, the determination of labor surplus areas shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.⁷¹⁵

Labor surplus
area
determination.

(o)⁷¹⁶ LIMITATIONS ON SUBCONTRACTING.—A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees to satisfy the requirements of section 46.

⁷¹⁵Subsection (n) added by § 18003(a) of PL 99-272, approved April 7, 1986 (100 Stat. 363). Section 18003(b) provided that this amendment will take effect on the ninetieth day after enactment.

⁷¹⁶Subsection (o) rewritten by § 1696(b)(3) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2091). Text of former subsection (o) is reprinted below:

- (1) A concern may not be awarded a contract under subsection (a) as a small business concern unless the concern agrees that—
 - (A) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern; and
 - (B) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).
- (2) The Administrator may change the percentage under subparagraph (A) or (B) of paragraph (1) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.
- (3) The Administration shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (2).

Subsection (o) added by § 921(c)(2) of PL 99-661, approved Nov. 14, 1986 (100 Stat. 3816). Paragraph (1)(A) originally read “. . . the concern will perform at least 50 percent of the cost of the contract with its own employees;”. Current language added by § 10(b)(1)(A) of PL 100-26, approved April 21, 1987 (100 Stat. 288), made applicable by § 12(c) as of the enactment of PL 99-661, *supra*. Last sentence in subsection 15(o)(3) added by § 10(b)(1)(B)(ii) of PL 100-26, approved April 21, 1987 (101 Stat. 288). Section 15(p) repealed by § 809(c) of PL 100-180, approved Dec. 4, 1987 (101 Stat. 1130). Text of repealed § 15(p):

- (p) (1) Except as provided in paragraphs (2) and (3), the head of any Federal agency shall, within five days of the agency's decision to set aside a procurement for small business concerns under this section, provide the names and addresses of the small business concerns expected to respond to the procurement to any person who requests such information.
- (2) The Secretary of Defense may decline to provide information under paragraph (1) in order to protect national security interests.
- (3) The head of a Federal agency is not required to release any information under paragraph (1) that is not required to be released under section 552 of title 5, United States Code.

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(p)⁷¹⁷ ACCESS TO DATA.—

(1) BUNDLED CONTRACT DEFINED.—In this subsection, the term “bundled contract” has the meaning given such term in section 3(o)(1). “Bundled contract.”

(2) DATABASE.—

(A) IN GENERAL.—Not later than 180 days after the date of the enactment of this subsection, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

(i) each bundled contract awarded by a Federal agency;
and

(ii) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

(3) ANALYSIS.—For each bundled contract that is to be recomputed as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (e)) achieved under the bundling of contract requirements; and § 15(p)(3)(B) to § 15(p)(4)(B))(ii)(II)(ee)

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(4) ANNUAL REPORT ON CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 1 year after the date of the enactment of this paragraph, and annually in March thereafter, the Administration shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate. Report to Congress.

(B) CONTENTS.—Each report transmitted under subparagraph (A) shall include—

(i) data on the number, arranged by industrial classification, of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

⁷¹⁷ New subsection 15(p) added by § 810 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Heading changed from “DATABASE, ANALYSIS, AND ANNUAL REPORT WITH RESPECT TO BUNDLED CONTRACTS” by § 1696(a)(1) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090).

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(ii) a description of the activities with respect to previously bundled contracts of each Federal agency during the preceding year, including—

(I) data on the number and total dollar amount of all contract requirements that were bundled; and

(II) with respect to each bundled contract, data or information on—

(aa) the justification for the bundling of contract requirements;

(bb) the cost savings realized by bundling the contract requirements over the life of the contract;

(cc) the extent to which maintaining the bundled status of contract requirements is projected to result in continued cost savings;

(dd) the extent to which the bundling of contract requirements complied with the contracting agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

(ee) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

§ 15(p)(5) to
§ 15(q)

(5) ACCESS TO DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through existing agency data collection sources.

(q)⁷¹⁸ REPORTS RELATED TO PROCUREMENT CENTER REPRESENTATIVES.—

(1) TEAMING AND JOINT VENTURE REQUIREMENTS.—

(A) IN GENERAL.—Each Federal agency shall include in each solicitation for any multiple award contract above the substantial bundling threshold of the Federal agency a provision soliciting bids from any responsible source, including responsible small business concerns and teams or joint ventures of small business concerns.

(B)⁷¹⁹ TEAMS.—When evaluating an offer of a small business prime contractor that includes a proposed team of small business subcontractors for any multiple award contract above the substantial bundling threshold of the Federal agency, the head of the agency shall consider the capabilities and past performance of each first tier

⁷¹⁸ New subsection 15(q) added by § 1312(a) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2537). Heading changed from “BUNDLING ACCOUNTABILITY MEASURES” by § 1696(a)(2) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2090). Section 1312(d) of P.L. 111-240 provides:

(d) ELECTRONIC PROCUREMENT CENTER REPRESENTATIVE.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall implement a 3-year pilot electronic procurement center representative program.

(2) REPORT.—Not later than 30 days after the pilot program under paragraph (1) ends, the Comptroller General of the United States shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the pilot program.

Section 1314 of P.L. 111-240 provides:

SEC. 1314. SMALL BUSINESS TEAMS PILOT PROGRAM.

(a) DEFINITIONS.—In this section—

(1) the term “Pilot Program” means the Small Business Teaming Pilot Program established under subsection (b); and

(2) the term “eligible organization” means a well-established national organization for small business concerns with the capacity to provide assistance to small business concerns (which may be provided with the assistance of the Administrator) relating to—

(A) customer relations and outreach;

(B) team relations and outreach; and

(C) performance measurement and quality assurance.

(b) ESTABLISHMENT.—The Administrator shall establish a Small Business Teaming Pilot Program for teaming and joint ventures involving small business concerns.

(c) GRANTS.—Under the Pilot Program, the Administrator may make grants to eligible organizations to provide assistance and guidance to teams of small business concerns seeking to compete for larger procurement contracts.

(d) CONTRACTING OPPORTUNITIES.—The Administrator shall work with eligible organizations receiving a grant under the Pilot Program to recommend appropriate contracting opportunities for teams or joint ventures of small business concerns.

(e) REPORT.—Not later than 1 year before the date on which the authority to carry out the Pilot Program terminates under subsection (f), the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the effectiveness of the Pilot Program.

(f) TERMINATION.—The authority to carry out the Pilot Program shall terminate 5 years after the date of enactment of this Act.

(g) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for grants under subsection (c) \$5,000,000 for each of fiscal years 2010 through 2015.

⁷¹⁹ New paragraphs 15(q)(1)(B) and (C) added by § 867(b)(2) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 933).

subcontractor that is part of the team as the capabilities and past performance of the small business prime contractor.

(C) JOINT VENTURES.—When evaluating an offer of a joint venture of small business concerns for any multiple award contract above the substantial bundling threshold of the Federal agency, if the joint venture does not demonstrate sufficient capabilities or past performance to be considered for award of a contract opportunity, the head of the agency shall consider the capabilities and past performance of each member of the joint venture as the capabilities and past performance of the joint venture.

(2) POLICIES ON REDUCTION OF CONTRACT BUNDLING.—

(A) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection, the Federal Acquisition Regulatory Council established under section 1302(a) of title 41, United States Code, shall amend the Federal Acquisition Regulation issued under section 1303 of title 41 to—

[41 USC 1302(a)]

(i) establish a Government-wide policy regarding contract bundling, including regarding the solicitation of teaming and joint ventures under paragraph (a); and

(ii) require that the policy established under clause (i) be published on the website of each Federal agency.

(B) RATIONALE FOR CONTRACT BUNDLING.—Not later than 30 days after the date on which the head of a Federal agency submits data certifications to the Administrator for Federal Procurement Policy, the head of the Federal agency shall post on the website of the Federal agency a list and rationale for any bundled contract for which the Federal agency solicited bids or that was awarded by the Federal agency.

§ 15(q)(3) to
§ 15(s)(1)

(3) REPORTING.—Not later than 90 days after the date of enactment of this subsection, and every 3 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding procurement center representatives and commercial market representatives, which shall—

Report.

(A) identify each area for which the Administration has assigned a procurement center representative or a commercial market representative;

(B) explain why the Administration selected the areas identified under subparagraph (A); and

(C) describe the activities performed by procurement center representatives and commercial market representatives.

(r)⁷²⁰ **MULTIPLE AWARD CONTRACTS.**—Not later than 1 year after the date of enactment of this subsection, the Administrator for Federal Procurement Policy and the Administrator, in consultation with the Administrator of General Services, shall, by regulation, establish guidance under which Federal agencies may, at their discretion—

(1) set aside part or parts of a multiple award contract for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2);

(2) notwithstanding the fair opportunity requirements under section 2304c(b) of title 10, United States Code, and section 303J(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(b)), set aside orders placed against multiple award contracts for small business concerns, including the subcategories of small business concerns identified in subsection (g)(2); and

(3) reserve 1 or more contract awards for small business concerns under full and open multiple award procurements, including the subcategories of small business concerns identified in subsection (g)(2).

(s)⁷²¹ **DATA QUALITY IMPROVEMENT PLAN.**—

(1) **IN GENERAL.**—Not later than October 1, 2015, the Administrator of the Small Business Administration, in consultation with the Small Business Procurement Advisory Council, the Administrator for Federal Procurement Policy, and the Administrator of General Services, shall develop a plan to improve the quality of data reported on bundle or consolidated contracts in the Federal procurement data system (described in section 1122(a)(4)(A) of title 41, United States Code). § 15(s)(2) to
§ 15(s)(6)(A)

(2) **PLAN REQUIREMENTS.**—The plan shall—

(A) describe the roles and responsibilities of the Administrator of the Small Business Administration, each Director of Small and Disadvantaged Business Utilization, the Administrator for Federal Procurement Policy, the Administrator of General Services, senior procurement executives, and Chief Acquisition Officers in—

(i) improving the quality of data reported on bundled or consolidated contracts in the Federal procurement data system; and

(ii) contributing to the annual report required by subsection (p)(4);

(B) recommend changes to policies and procedures, including training procedures of relevant personnel, to properly identify and mitigate the effects of bundled or consolidated contracts;

⁷²⁰ New subsection 15(r) added by § 1331 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2541).

⁷²¹ New subsection 15(s) added by § 822(a) of P.L. 113-291, approved Dec. 19, 2014 (128 Stat. 3435).

(C) recommend requirements for periodic and statistically valid data verification and validation; and

(D) recommend clear data verification responsibilities.

(3) PLAN SUBMISSION.—The Administrator of the Small Business Administration shall submit the plan to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate not later than December 1, 2016.

(4)⁷²² IMPLEMENTATION.—Not later than October 1, 2016, the Administrator of the Small Business Administration shall implement the plan described in this subsection.

(5) CERTIFICATION.—The Administrator shall annually provide to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a certification of the accuracy and completeness of data reported on bundled and consolidated contracts.

(6)⁷²³ DEFINITIONS.—In this subsection, the following definitions apply:

§ 15(s)(6)(B) to § 15(v)(1)(B)

(A) CHIEF ACQUISITION OFFICER; SENIOR PROCUREMENT EXECUTIVE.—The terms “Chief Acquisition Officer” and “senior procurement executive” have the meanings given such terms in section 44(a) of this Act.

“Chief Acquisition Officer.”
“Senior procurement executive.”

(B) BUNDLED OR CONSOLIDATED CONTRACT.—The term “bundled or consolidated contract” means a bundled contract (as defined in section 3(o)) or a contract resulting from the consolidation of contracting requirements (as defined in section 44(a)(2)).

“Bundled or consolidated contract.”

(t)⁷²⁴ GAO REPORT ON SMALL BUSINESS ADMINISTRATION PROGRAMS IN PUERTO RICO.—Not later than one year after the date of enactment of this subsection, the Comptroller General of the United States shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report on the application and utilization of contracting activities of the Administration (including contracting activities relating to HUBZone small business concerns) in Puerto Rico. The report shall also identify any provisions of Federal law that may create an obstacle to the efficient implementation of such contracting activities.

⁷²² New paragraphs 15(s)(4) and (5) added by § 862(a)(2) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 925).

⁷²³ Paragraph 15(s)(4) redesignated as 15(s)(6) by § 862(a)(1) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 925).

⁷²⁴ New subsection 15(t) added by § 408 of P.L. 114-187, approved June 30, 2016 (130 Stat. 592).

(u)⁷²⁵ POST-AWARD COMPLIANCE RESOURCES.—The Administrator shall provide to small business development centers and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 142 of title 10, United States Code, and shall make available on the website of the Administration, a list of resources for small business concerns seeking education and assistance on compliance with contracting regulations (including the Federal Acquisition Regulation) after award of a contract or subcontract.

(v)⁷²⁶ REGULATORY CHANGES AND TRAINING MATERIALS.—Not less than annually, the Administrator shall provide to the Defense Acquisition University (established under section 1746 of title 10, United States Code), the Federal Acquisition Institute (established under section 1201 of title 41, United States Code), the individual responsible for mandatory training and education of the acquisition workforce of each agency (described under section 1703(f)(1)(C) of title 41, United States Code), small business development centers, and entities participating in the Procurement Technical Assistance Cooperative Agreement Program under chapter 142 of title 10, United States Code—

(1) a list of all changes made in the prior year to regulations promulgated

(A) by the Administrator that affect Federal acquisition; and

(B) by the Federal Acquisition Council that implement amendments to this Act; and

§ 15(v)(2) to
§ 15(w)(3)

(2) any materials the Administrator has developed that explain, train, or assist Federal agencies or departments or small business concerns with compliance with the regulations described in paragraph (1).

(w)⁷²⁷ SOLICITATION NOTICE REGARDING ADMINISTRATION OF CHANGE ORDERS FOR CONSTRUCTION.—

(1) IN GENERAL.—With respect to any solicitation for the award of a contract for construction anticipated to be awarded to a small business concern, the agency administering such contract shall provide a notice along with the solicitation to prospective bidders and offerors that includes—

(A) information about the agency’s policies or practices in complying with the requirements of the Federal Acquisition Regulation relating to the timely definitization of requests for an equitable adjustment; and

⁷²⁵ New subsection 15(u) added by § 1813(c) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2653).

⁷²⁶ New subsection 15(v) added by § 1814 of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2653).

⁷²⁷ New subsection 15(w) added by § 855 of P.L. 115-232, approved August 13, 2018 (Stat.).

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(B) information about the agency's past performance in definitizing requests for equitable adjustments in accordance with paragraph (2).

(2) REQUIREMENTS FOR AGENCIES.—An agency shall provide the past performance information described under paragraph (1)(B) as follows:

(A) For the 3-year period preceding the issuance of the notice, to the extent such information is available.

(B) With respect to an agency that, on the date of the enactment of this subsection, has not compiled the information described under paragraph (1)(B)—

(i) beginning 1 year after the date of the enactment of this subsection, for the 1-year period preceding the issuance of the notice;

(ii) beginning 2 years after the date of the enactment of this subsection, for the 2-year period preceding the issuance of the notice; and

(iii) beginning 3 years after the date of the enactment of this subsection and each year thereafter, for the 3-year period preceding the issuance of the notice.

§ 15(w)(3)(A) to
§ 16(a)

(3) FORMAT OF PAST PERFORMANCE INFORMATION.—In the required under paragraph (1), the agency shall ensure that the past performance information described under paragraph (1)(B) is set forth separately for each definitization action that was completed during the following periods:

(A) Not more than 30 days after receipt of a request for an equitable adjustment.

(B) Not more than 60 days after receipt of a request for an equitable adjustment.

(C) Not more than 90 days after receipt of a request for an equitable adjustment.

(D) Not more than 180 days after receipt of a request for an equitable adjustment.

(E) Not more than 365 days after receipt of a request for an equitable adjustment.

(F) More than 365 days after receipt of a request for an equitable adjustment.

(G) After the completion of the performance of the contract through a contract modification addressing all undefinitized requests for an equitable adjustment received during the term of the contract.

(x)⁷²⁸ SMALL BUSINESS CREDIT FOR PUERTO RICO BUSINESSES.—

(1) CREDIT FOR MEETING CONTRACTING GOALS.—If an agency awards a prime contract to [a] Puerto Rico business during the period beginning on the date of enactment of this subsection and ending on the date that is 4 years after such date of enactment, the value of the contract shall be doubled for purposes of determining compliance with the goals for procurement contracts under subsection (g)(1)(A)(i) during such period.

(2) REPORT.—Along with the report required under subsection (h)(1), the head of each Federal agency shall submit to the Administrator, and make publicly available on the scorecard described in section 868(b) of the National Defense Authorization Act for Fiscal Year 2016 (15 U.S.C. 644 note), an analysis of the number and dollar amount of prime contracts awarded pursuant to paragraph (1) for each fiscal year of the period described in such paragraph.

§ 16. (a) Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this Act, shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or both. 15 U.S.C. 645. § 16(b) to § 16(d)(1)(C)

(b) Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or Pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration makes any false entry in any book, report, or statement of or to the Administration, or without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (3) with intent to defraud participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or any other act of the Administration, or (4) gives any unauthorized information concerning any future action or Plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than \$10,000 or by imprisonment for not more than five years, or both. Penalty for wrongful conduct.

⁷²⁸ New subsection 15(x) added by § 861(b) of P.L. 115-232, approved August 13, 2018 (Stat.).

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(c)⁷²⁹ Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or Pledged to, or held by, the Administration, shall be fined not more than \$5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed \$100, he shall be fined not more than \$1,000 or imprisoned not more than one year, or both.

Penalty for misappropriation of SBA collateral.

(d)⁷³⁰ (1) Whoever misrepresents the status of any concern or person as a “small business concern,” a “qualified HUBZone small business concern,”⁷³¹ a “small business concern owned and controlled by socially and economically disadvantaged individuals” or a “small business concern[s] owned and controlled by women,”⁷³² in order to obtain for oneself or another any—

Penalty for misrepresentation.

(A) prime contract to be awarded pursuant to section 9, 15, or 31;

(B) subcontract to be awarded pursuant to section 8(a);

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting Plan required pursuant to section 8(d); or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the [31 USC 3801]. Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812);

(C) be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation)⁷³³; and

§ 16(d)(1)(D) to
§ 16(d)(2)(D)

⁷²⁹Section 16(c) added by § 2 of P.L. 88-264, approved Feb. 5, 1964 (78 Stat. 8).

⁷³⁰Subsections 16(d) and (e) added by § 18009 of P.L. 99-272, approved April 7, 1986 (100 Stat. 368). Subsection 16(d) rewritten by § 405(a) of P.L. 100-656, approved Nov. 15, 1988 (102 Stat. 3875). For prior version of this section, see § 18009 of P.L. 99-272, approved April 7, 1986 (100 Stat. 368).

⁷³¹ Reference to “qualified HUBZone small business concern” and section 31 added by § 603(c)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

⁷³²Reference to women added by § 7106(c)(1) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3376).

⁷³³ Phrase “on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract” deleted by § 1682(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2086). Section 1682 of P.L. 112-239 also provides:

(D) be ineligible for participation in any program or activity conducted under the authority of this Act or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

(3)⁷³⁴ **LIMITATION ON LIABILITY.**—This subsection shall not apply to any conduct in violation of subsection (a) if the defendant acted in good faith reliance on a written advisory opinion from a Small Business Development Center (as defined in this Act), or an entity participating in the Procurement Technical Assistance Cooperative Agreement Program defined in chapter 142 of title 10, United States Code; however nothing in this Act shall obligate either entity to provide such a letter nor shall the provision of such a letter in any way render the providing entity liable to the business concern should the Administrator later determine that the concern is not a small business concern. Upon issuance of an

(b) **DEVELOPMENT AND PROMULGATION OF GUIDANCE.**—Not later than 270 days after the date of enactment of this part, the Administrator of the Small Business Administration shall develop and promulgate guidance implementing this section.

(c) **PUBLICATION OF PROCEDURES REGARDING SUSPENSION AND DEBARMENT.**—Not later than 270 days after the date of enactment of this part, the Administrator shall publish and maintain on the Administration's Web site the current standard operating procedures of the Administration for suspension and debarment, and the name and contact information for the individual designated by the Administrator as the senior individual responsible for suspension and debarment proceedings.

Section 1683 of P.L. 112-239 provides:

Sec. 1683. **ANNUAL REPORT ON SUSPENSIONS AND DEBARMENTS PROPOSED BY SMALL BUSINESS ADMINISTRATION.**

(a) **REPORT REQUIREMENT.**—The Administrator of the Small Business Administration shall submit each year to the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives a report on the suspension and debarment actions taken by the Administrator during the year preceding the year of submission of the report.

(b) **MATTERS COVERED.**—The report required by subsection (a) shall include the following information for the year covered by the report:

(1) **NUMBER.**—The number of contractors proposed for suspension or debarment.

(2) **SOURCE.**—The office within a Federal agency that originated each proposal for suspension or debarment.

(3) **REASONS.**—The reason for each proposal for suspension or debarment.

(4) **RESULTS.**—The result of each proposal for suspension or debarment, and the reason for such result.

(5) **REFERRALS.**—The number of suspensions or debarments referred to the Inspector General of the Small Business Administration or another agency, or to the Attorney General (for purposes of this paragraph, the Administrator may redact identifying information on names of companies or other information in order to protect the integrity of any ongoing criminal or civil investigation).

⁷³⁴ New paragraph 16(d)(3) added by § 1681(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2085). Section 1681 also provides:

(b) **REGULATIONS.**—Not later than 270 days after the date of enactment of this part, the Administrator of the Small Business Administration shall issue rules defining what constitutes an adequate advisory opinion for purposes of section 16(d)(3) of the Small Business Act.

(c) **SMALL BUSINESS COMPLIANCE GUIDE.**—Not later than 270 days after the date of enactment of this part, the Administrator of the Small Business Administration shall issue (pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996) a compliance guide to assist business concerns in accurately determining their status as a small business concern.

advisory opinion under this paragraph, the entity issuing the advisory opinion shall remit a copy of the opinion to the General Counsel of the Administration, who may reject the advisory opinion. If the General Counsel of the Administration rejects the advisory opinion, the Administration shall notify the entity issuing the advisory opinion and the recipient of the opinion, after which time the business concern may not rely upon the opinion.

(e) Any representation of the status of any concern or person as a “small business concern,” a “HUBZone small business concern,”⁷³⁵ a “small business concern owned and controlled by socially and economically disadvantaged individuals,” or a “small business concern[s] owned and controlled by women”⁷³⁶ in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.

(f)⁷³⁷ Whoever falsely certifies past compliance with the requirements of section 7(j)(10)(I) of this Act shall be subject to the penalties prescribed in subsection (d).

§ 16(g)(1)(A) to § 18(b) g)⁷³⁸ SUBCONTRACTING LIMITATIONS.—

(1) IN GENERAL.—Whoever violates a requirement established under section 46 shall be subject to the penalties prescribed in subsection (d), except that, for an entity that exceeded a limitation on subcontracting under such section, the fine described in subsection (d)(2)(A) shall be treated as the greater of—

(A) \$500,000; or

(B) the dollar amount expended, in excess of permitted levels, by the entity on subcontractors.

(2) MONITORING.—Not later than 1 year after the date of enactment of this subsection, the Administrator shall take such actions as are necessary to ensure that an existing Federal subcontracting reporting system is modified to notify the Administrator, the appropriate Director of the Office of Small and Disadvantaged Business Utilization, and the appropriate contracting officer if a requirement established under section 46 is violated.

§ 17. Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

Subordination
of SBA
collateral.
15 USC 646.

⁷³⁵ Reference to “HUBZone small business concern” added by § 603(c)(2) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2632).

⁷³⁶Reference to women added by § 7106(c)(2) of P.L. 103-355, approved Oct. 13, 1994 (108 Stat. 3376).

⁷³⁷Subsection 16(f) added by § 405(b) of P.L. 100-656, approved Nov. 15, 1988 (102 Stat. 3875).

⁷³⁸ New subsection 16(g) added by § 1652 of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2081).

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§ 18.⁷³⁹(a) The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government⁷⁴⁰ and nothing contained in this Act shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this Act. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.⁷⁴¹

Avoidance of duplication.
15 USC 647.

(b)⁷⁴² As used in this Act, the term “agricultural enterprises” means those small business concerns engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural-related industries.

§ 19 to
§ “Agricultural enterprises.”

§ 19. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Separability.
15 USC 631 note.

⁷³⁹Section 18 redesignated as § 18(a) and subsection 18(b) added by P.L. 96-38, approved July 25, 1979 (93 Stat. 97, 119).

⁷⁴⁰The exception for agricultural concerns established by § 112(e) of P.L. 94-305, approved June 4, 1976 (90 Stat. 663), was deleted by § 18006(a)(3) of P.L. 99-272, approved April 7, 1986 (100 Stat. 366). The repealed exception applied to “enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related activities.” See also first clause of § 7(b) of the Act.

⁷⁴¹Last sentence added by § 5 of P.L. 93-386, approved Aug. 23, 1974 (88 Stat. 742).

⁷⁴²Original § 18(b) added by P.L. 96-38, approved July 25, 1979 (93 Stat. 97, 119). Amended by § 119(c)(2) of P.L. 96-302, approved July 2, 1980 (94 Stat. 833), by adding definition of “agricultural enterprises.” Amendments made to § 18 by § 119 of P.L. 96-302 shall not apply to any disaster which commenced on or before the effective date of P.L. 96-302 (i.e. July 2, 1980) per § 119(d) of P.L. 96-302. For another definition of “credit elsewhere,” see § 3(h) of this Act. [?] Word “businesses” in paragraph (1) replaced with “small business concerns” by § 1831(a) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2657). Section 18(b) completely rewritten by § 4(b) of P.L. 115-189, approved June 21, 2018 (Stat.). Text of former § 18(b) is reprinted below:

(b) As used in this Act—

- (1) “agricultural enterprises” means those small business concerns engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and
- (2) “credit elsewhere” means the availability of sufficient credit from non Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.

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§ 20.⁷⁴³(a) (1)⁷⁴⁴ For fiscal year 2000 and each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary and appropriate, to remain available until expended, and to be available solely—

Authorization for appropriations. Program levels. 15 USC 631 note.

(A) to carry out the Small Business Development Center Program under section 21, but not to exceed the annual funding level, as specified in section 21(a);

(B) to pay the expenses of the National Small Business Development Center Advisory Board, as provided in section 21(i);

(C) to pay the expenses of the information sharing system, as provided in section 21(c)(8);

(D) to pay the expenses of the association referred to in section 21(a)(3)(A) for conducting the accreditation program, as provided in section 21(k)(2); and

(E) to pay the expenses of the Administration, including salaries of examiners, for conducting examinations as part of the accreditation program conducted by the association referred to in section 21(a)(3)(A).

§ 20(a)(2) to § 20(b)

(F)⁷⁴⁵ to pay for small business development center grants as mandated or directed by Congress.

(2)⁷⁴⁶ Notwithstanding any other provision of law, the Administration shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals, or other amounts due under qualified contracts and other types of financial assistance and enter into commitments to purchase debentures and preferred securities and to guarantee sureties against loss pursuant to programs under this Act and the Small Business Investment Act of 1958, in the full amounts provided by law subject only to (A) the availability of qualified applications, and (B) limitations contained in appropriations Acts. Nothing in this

⁷⁴³Section 20 was renumbered and rewritten and subsections (d) through (h) added by § 101 of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 2990).

⁷⁴⁴References to “certification” were changed to “accreditation” in subparagraph 20(a)(1) by § 121(1) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-638). Paragraph 20(a)(1) was rewritten by § 804(a)(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). The first sentence of former paragraph 20(a)(1) was added by § 102 of P.L. 95-89, approved Aug. 4, 1977 (91 Stat. 553). The rest of the language in 20(a)(1) was added by § 3(1) of P.L. 98-395, approved Aug. 21, 1984 (98 Stat. 1366). The text of former paragraph 20(a)(1) is reprinted below:

For fiscal year 1985 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to carry out the provisions and purposes of this Act other than those for which appropriations are specifically authorized. For fiscal year 1986 and every year thereafter, there are hereby authorized to be appropriated such sums as may be necessary and appropriate to be available solely (1) to carry out the provisions and purposes of the Small Business Development Center Program in section 21, but not to exceed the level as specified in subsection (a) of such section, (2) to pay the expenses of the National Small Business Development Center Advisory Board as provided in section 21(h), and (3) to reimburse centers for participation in evaluations as provided in section 21(j). All appropriations whether specifically or generally authorized shall remain available until expended.

⁷⁴⁵Subparagraph 20(a)(1)(F) added by § 2203(a)(3) of P.L. 107-20, approved July 24, 2001 (115 Stat. 170).

⁷⁴⁶Paragraph 20(a)(2) added by § 18012 of P.L. 99-272, approved April 7, 1986, (100 Stat. 369).

paragraph authorizes the Administration to reduce or limit its authority to enter into such commitments. Subject to approval in appropriations Acts, amounts authorized for preferred securities, debentures or participating securities under title III of the Small Business Investment Act of 1958 may be obligated in one fiscal year and disbursed or guaranteed in any 1 or more of the 4 subsequent fiscal years.⁷⁴⁷

(3)⁷⁴⁸ There are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for administrative expenses of the Administration. Disaster loan fund, transfers.

(4)⁷⁴⁹ Except as may be otherwise specifically provided by law, the amount of deferred participation loans authorized in this section— Deferred participation loans.

(A) shall mean the net amount of the loan principal guaranteed by the Small Business Administration (and does not include any amount which is not guaranteed); and

(B) shall be available for a national program, except that the Administration may use not more than an amount equal to 10 percent of the amount authorized each year for any special or pilot program directed to identified sectors of the small business community or to specific geographic regions of the United States.

(b)⁷⁵⁰ There are authorized to be appropriated to the Administration for fiscal year 1991 such sums as may be necessary to carry out the provisions of this Act and the Small Business Investment Act of 1958. There also are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative, of sections 7(b)(1) and 7(b)(2) of this Act; and there are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for such administrative expenses. § 20(c) to § 20(d)(1)(B)(iv)

(c)⁷⁵¹ DISASTER MITIGATION PILOT PROGRAM.—The following program levels are authorized for loans under section 7(b)(1)(C): Disaster mitigation pilot program..

⁷⁴⁷ The last sentence of paragraph 20(a)(2) was added by § 414 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 135, approved Dec. 2, 1997 (111 Stat. 2600). The phrase “the following fiscal year” at the end of the sentence was replaced with current language by § 211 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2600).

⁷⁴⁸ Paragraph 20(a)(3) added by § 102 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2818).

⁷⁴⁹ New paragraph (4) added by § 102(1) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 987).

⁷⁵⁰ Former subsections 20(b) through (g) deleted, former subsection 20(h) redesignated 20(b) and new subsections 20(c) through 20(j) added by § 101 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2815).

⁷⁵¹ Subsections 20(c) through 20(i) deleted and new subsections 20(c) through 20(e) added by § 121(2) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-638). For text of former subsections 20(c) through 20(i), please refer to earlier editions of this Handbook. Former subsections 20(c) through (q) were deleted and new subsections 20(c) through (e) added by § 101 of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2594). For text of former subsections 20(c) through (q), please refer to earlier editions of this Handbook.

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- (1) \$15,000,000 for fiscal year 2005.
- (2) \$15,000,000 for fiscal year 2006.

(d) FISCAL YEAR 2005.—

FY 2005.

(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2005:

(A) For the programs authorized by this Act, the Administration is authorized to make—

(i) \$75,000,000 in technical assistance grants, as provided in section 7(m); and

(ii) \$105,000,000 in direct loans, as provided in 7(m).

(B) For the programs authorized by this Act, the Administration is authorized to make \$23,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

(i) \$16,500,000,000 in general business loans, as provided in section 7(a);

(ii) \$6,000,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958;

(iii) \$500,000,000 in loans, as provided in section 7(a)(21);

(iv) \$50,000,000 in loans, as provided in section 7(m).

§ 20(d)(1)(C) to
§ 20(e)(1)(A)

(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

(i) \$4,250,000,000 in purchases of participating securities;
and

(ii) \$3,250,000,000 in guarantees of debentures.

(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

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(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of \$7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

(2) ADDITIONAL AUTHORIZATIONS.—

(A) There are authorized to be appropriated to the Administration for fiscal year 2005 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

(B) Notwithstanding any other provision of this paragraph, for fiscal year 2005—

(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than \$2,000,000.

(e) FISCAL YEAR 2006.—

FY 2006.

(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2006: § 20(e)(1)(A)(i) to § 20(e)(2)(A)

(A) For the programs authorized by this Act, the Administration is authorized to make—

(i) \$80,000,000 in technical assistance grants, as provided in section 7(m); and

(ii) \$110,000,000 in direct loans, as provided in 7(m).

(B) For the programs authorized by this Act, the Administration is authorized to make \$25,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

(i) \$17,000,000,000 in general business loans, as provided in section 7(a);

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(ii) \$7,500,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958;

(iii) \$500,000,000 in loans, as provided in section 7(a)(21);
and

(iv) \$50,000,000 in loans, as provided in section 7(m).

(C) For the programs authorized by title III of the Small Business Investment Act of 1958, the Administration is authorized to make—

(i) \$4,500,000,000 in purchases of participating securities;
and

(ii) \$3,500,000,000 in guarantees of debentures.

(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958, the Administration is authorized to enter into guarantees not to exceed \$6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act.

(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of \$7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1).

(2) ADDITIONAL AUTHORIZATIONS.—

(A) There are authorized to be appropriated to the Administration for fiscal year 2006 such sums as may be necessary to carry out the provisions of this Act not § 20(e)(2)(B) to § 20(g)(2)(A) were provided for, including administrative expenses and necessary loan capital for § 20(g)(2)(A) for loans pursuant to section 7(b), and to carry out the Small Business Investment Act of 1958, including salaries and expenses of the Administration.

(B) Notwithstanding any other provision of this paragraph, for fiscal year 2006—

(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the

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Small Business Investment Act of 1958, except that it may approve loans under section 7(a) (21) of this Act in gross amounts of not more than \$2,000,000.

(f)⁷⁵² FISCAL YEAR 2004 PURCHASE AND GUARANTEE AUTHORITY UNDER TITLE III OF SMALL BUSINESS INVESTMENT ACT OF 1958.—For fiscal year 2004, for the programs authorized by title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.), the Administration is authorized to make—

- (1) \$4,000,000,000 in purchases of participating securities; and
- (2) \$3,000,000,000 in guarantees of debentures.

(g)⁷⁵³ AUTHORITY TO INCREASE AMOUNT OF GENERAL BUSINESS LOANS.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3) and with respect to fiscal year 2019 and each fiscal year thereafter, if the Administrator determines that the amount of commitments by the Administrator for general business loans authorized under section 7(a) for a fiscal year could exceed the limit on the total amount of commitments the Administrator may make for those loans under this Act, an appropriations Act, or any other provision of law, the Administrator may make commitments for those loans for that fiscal year in an aggregate amount equal to not more than 115 percent of that limit.

(2) NOTICE REQUIRED BEFORE EXERCISING AUTHORITY.—Not later than 30 days before the date on which the Administrator intends to exercise the authority under paragraph (1), the Administrator shall submit notice of intent to exercise the authority to—

(A) the Committee on Small Business and Entrepreneurship and the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the Senate; and

§ 20(g)(2)(B) to § 21(a)(1)

(B) the Committee on Small Business and the Subcommittee on Financial Services and General Government of the Committee on Appropriations of the House of Representatives.

(3) LIMITATION.—The Administrator shall not exercise the authority under paragraph (1) more than once during any fiscal year.

⁷⁵² New subsection 20(j) added by § 3 of P.L. 108-217, approved April 5, 2004 (118 Stat. 591). Subsection 20(j) redesignated as 20(f) by § 5(1) of P.L. 115-189, approved June 21, 2018 (Stat.).

⁷⁵³ New subsection 20(g) added by § 5(2) of P.L. 115-189, approved June 21, 2018 (Stat.).

§ 21.⁷⁵⁴(a) (1) The Administration is authorized to make grants (including contracts and cooperative agreements) to any State government or any agency thereof, any regional entity, any State-chartered development, credit or finance corporation, any women’s business center operating pursuant to section 29,⁷⁵⁵ any public or private institution of higher education, including but not limited to any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, community college or junior college, or to any entity formed by two or more of the above entities (herein referred to as “applicants”) to assist in establishing small business development centers and to any such body for: small business oriented employment or natural resources development programs; studies, research, and counseling concerning the managing, financing, and operation of small business enterprises; management and technical assistance regarding small business participation in international markets, export promotion and technology transfer, delivery or distribution of such services and information; and providing access to business analysts who can refer small business concerns to available experts; and, to the extent practicable, providing assistance in furtherance of the Small Business Development Center Cyber Strategy developed under section 1841(a) of the National Defense Authorization Act for Fiscal Year 2017⁷⁵⁶: Provided,⁷⁵⁷ That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women’s business center operating pursuant to section 29 as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education and women’s business centers

Small business development centers.
15 USC 648.

⁷⁵⁴Former § 21 redesignated as § 30 and new § 21 added by Title II, § 202 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833). Section 204 of P.L. 96-302 provided for the repeal of § 21 effective Oct. 1, 1984. The program was extended to Oct. 1, 1990, per § 4 of P.L. 98-395, approved Aug. 21, 1984 (98 Stat. 1366). Program authorizations are found in § 21(a)(4)(C) (vi). Note: P.L. 98-8 approved March 24, 1983, Emergency Jobs Appropriation (97 Stat. 13), provided:

Developing Parks and Recreation Areas

An additional amount of \$50,000,000 to remain available until expended, is appropriated for “Salaries and expenses,” Small Business Administration to be available only for grants for resources development programs pursuant to section 21(a)(1) of the Small Business Act; notwithstanding any other provision of law including any contained herein, such sum shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the average of the number of unemployed individuals who reside in each such area as compared to the total number of unemployed individuals in all of the States, the District of Columbia and Puerto Rico during the fourth quarter of calendar year 1982; upon receipt of a certification, which the Administrator deems appropriate from the Governor of any State or Puerto Rico or the Mayor of the District of Columbia, the grant to that are may be made (sic) immediately, and an expedited review and approval of any rules, regulations or procedures is hereby authorized and shall be completed by April 15, 1983.

For language affecting SBDCs in appropriations statutes, see page 601 of this Handbook.

⁷⁵⁵ References to women’s business centers in this paragraph were added by § 502(a)(1) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2622).

⁷⁵⁶ Reference to the SBDC Cyber Strategy added by § 1842(1) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2664). For text of section 1841, see footnote to § 21(c)(2)(G).

⁷⁵⁷Proviso added by § 6 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2142).

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operating pursuant to section 29 to provide services to the small business community. The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.⁷⁵⁸

(2)⁷⁵⁹ COOPERATION TO PROVIDE INTERNATIONAL TRADE SERVICES.—

(A) INFORMATION AND SERVICES.--The small business development centers shall work in close cooperation with the Administration's regional and local offices, the Department of Commerce, appropriate Federal, State and local agencies (including state trade agencies)⁷⁶⁰ and the small business community to serve as an active information dissemination and service delivery mechanism for existing trade promotion, trade finance, trade adjustment, trade remedy and trade data collection programs of particular utility for small businesses.

(B) COOPERATION WITH STATE TRADE AGENCIES AND EXPORT ASSISTANCE CENTERS.—A small business development center that counsels a small business concern on issues relating to international trade shall—

(i) consult with State trade agencies and Export Assistance Centers to provide appropriate services to the small business concern; and

(ii) as necessary, refer the small business concern to a State trade agency or an Export Assistance Center for further counseling or assistance.

(C) DEFINITION.—In this paragraph, the term “Export Assistance Center” has the same meaning as in section 22.

§ 21(a)(3) to
§ 21(a)(3)(A)

“Export Assistance Center.”

(3) The Small Business Development Center Program shall be under the general management and oversight of the Administration,⁷⁶¹ for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an

Cooperative agreement.

⁷⁵⁸Last sentence in subsection 21(a)(1) and all of subsections 21(a)(3) through 21(a)(5) substituted by § 2 of P.L. 98-395, approved August 21, 1984, Small Business Development Center Act of 1984 (98 Stat. 1366). Clause in 21(a)(1) “management ... and technology transfer” added by subsection 8006(b)(1) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1557). Subsections 21(a)(3) through 21(a)(5) renumbered and new subsection 21(a)(2) inserted by subsection 8006(b)(2) of P.L. 100-418.

⁷⁵⁹ Paragraph 21(a)(2) was rewritten to add new subparagraphs (B) and (C) by § 1209(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2536)

⁷⁶⁰ Parenthetical added by §1209(2)(A) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2536).

⁷⁶¹ Language following the footnote signal was added by § 502(a)(2)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2622). Former language read as follows: “, but with recognition that a partnership exists under this section between the Administration and the applicant for the delivery of assistance to the small business community. Services shall be provided pursuant to a negotiated cooperative agreement with full participation of both parties”.

executed cooperative agreement between the Small Business Development Center applicant and the Administration.

§ 21(a)(3)(B) to
§ 21(a)(4)(B)

(A)⁷⁶² Small business development centers are authorized to form an association to pursue matters of common concern. If more than a majority of the small business development centers which are operating pursuant to agreements with the Administration are members of such an association, the Administration is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents (i) announcing the annual scope of activities pursuant to this section, (ii) requesting proposals to deliver assistance as provided in this section and (iii) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated cooperative agreement for use on an annual basis when entering into individual negotiated agreements with small business development centers.

⁷⁶²Subparagraphs (A) and (B) added by § 223(a) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 1000). Section 233(b) provides:

Not later than 180 days after the date of enactment of this Act, the Administrator of the Small Business shall submit to the Committees on Small Business and the committees on Appropriations of the Senate and the House of Representatives, proposed regulations for the Small Business Development Center Program authorized by section 21 of the Small Business Act (15 U.S.C. 648).

The last sentence of section 223(b), which prohibited the Agency from publishing proposed regulations in the Federal Register, was deleted by § 9(c) of P.L. 103-81, approved August 13, 1993 (107 Stat. 783).

Section 302 of P.L. 106-50, approved August 17, 1999 (113 Stat. 242), provides:

Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans affairs, the Administrator of the Small Business Administration, and the head of the association formed pursuant to section 21(a)(3)(A) of the Small Business Act shall enter into a memorandum of understanding with respect to entrepreneurial assistance to veterans, including service-disabled veterans, through Small Business Development Centers (described in section 21 of the Small Business Act (15 USC 648)) and facilities of the Department of Veterans Affairs. Such assistance shall include the following:

- (1) Conducting of studies and research, and the distribution of information generated by such studies and research, on the formation, management, financing, marketing, and operation of small business concerns by veterans.
- (2) Provision of training and counseling to veterans concerning the formation, management, financing, marketing, and operation of small business concerns.
- (3) Provision of management and technical assistance to the owners and operators of small business concerns regarding international markets, the promotion of exports, and the transfer of technology.
- (4) Provision of assistance and information to veterans regarding procurement opportunities with Federal, State, and local agencies, especially such agencies funded in whole or in part with Federal funds.
- (5) Establishment of an information clearinghouse to collect and distribute information, including by electronic means, on the assistance programs of Federal, State, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mail and electronic addresses, and contracting and subcontracting opportunities.
- (6) Provision of Internet or other distance learning academic instruction for veterans in business subjects, including accounting, marketing, and business fundamentals.
- (7) Compilation of a list of small business concerns owned and controlled by service-disabled veterans that provide products or services that could be procured by the United States and delivery of such list to each department and agency of the United States. Such list shall be delivered in hard copy and electronic form and shall include the name and address of each such small business concern and the products or services that it provides.

(B) Provisions governing audits, cost principles and administrative requirements for Federal grants, contracts and cooperative agreements which are included in uniform requirements of Office of Management and Budget (OMB) Circulars shall be incorporated by reference and shall not be set forth in summary or other form in regulations.

(C)⁷⁶³ On an annual basis, the Small Business Development Center shall review and coordinate public and private partnerships and cosponsorships with the Administration for the purpose of more efficiently leveraging available resources on a National and a State basis.

(4)⁷⁶⁴ SMALL BUSINESS DEVELOPMENT CENTER PROGRAM LEVEL.—

(A) IN GENERAL.—The Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions.

Non-federal additional amount.

(B) RESTRICTION.—The matching amount described in subparagraph (A) shall not include any indirect costs or in-kind contributions derived from any Federal program.

§ 21(a)(4)(C) to § 21(a)(4)(C)(i) restrictions.

(C)⁷⁶⁵ FUNDING FORMULA.—

⁷⁶³ New subparagraph 21(a)(3)(C) added by § 502(a)(2)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2622).

⁷⁶⁴ Paragraph 21(a)(4) rewritten by § 402 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4190). For legislative history of prior paragraph 21(a)(4), see previous edition of this handbook. The text of former § 21(a)(4) is reprinted below:

Except as provided in paragraph (4), the Administration shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section that an additional amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government: Provided, That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall such indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount: Provided further, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a \$70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus \$100,000 for each State, but no State shall receive less than \$200,000.

⁷⁶⁵ Section 21(a)(4)(C) completely rewritten by § 804(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). For the legislative history of previous § 21(a)(4)(C) please refer to earlier editions of this Handbook. The text of former 21(a)(4)(C) is reprinted below:

NATIONAL PROGRAM.—

(i) IN GENERAL—

(I) GRANT AMOUNT.—Subject to subclauses (II) and (III), the amount of a grant received by a State under this section shall be equal to the greater of \$500,000, or the sum of—

(aa) the State’s pro rata share of the national program, based upon the population of the State as compared to the total

§ 21(a)(4)(C)(i)(I) to
 § 21(a)(4)(C)(iii)(II)

(i)⁷⁶⁶ **IN GENERAL.**—Subject to clause (iii), the amount of a formula grant received by a State under this subparagraph shall be equal to an amount determined in accordance with the following formula:

(I) The annual amount made available under section 20(a) for the Small Business Development Center Program, less any reductions made for expenses authorized by clause (v) of this subparagraph, shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

population of the United States; and

(bb) \$300,000 in fiscal year 1998, \$400,000 in fiscal year 1999, and \$500,000 in each fiscal year thereafter.

(II) **PRO RATA REDUCTIONS.**—If the amount made available to carry out this section for any fiscal year is insufficient to carry out subclause (I)(bb), the Administration shall make pro rata reductions in the amounts otherwise payable to States under subclause (I)(bb).

(III) **MATCHING REQUIREMENT.**—The amount of a grant received by a State under this section shall not exceed the amount of matching funds from sources other than the Federal Government provided by the State under subparagraph (A).

(ii) **EXCEPTION.**—Grants provided to a small business development center by the Administration or another agency to carry out the provisions of subsection (c)(3)(G) shall not be included in the calculation of maximum funding of a small business development center.

(iii) **NATIONAL PROGRAM.**—There are authorized to be appropriated to carry out the national program under this section—

(I) \$85,000,000 for fiscal year 1998;

(II) \$90,000,000 for fiscal year 1999; and

(III) \$95,000,000 for fiscal year 2000 and each fiscal year thereafter.

The amount for which a small business development center is eligible under this paragraph shall be based upon the amount of the national program in effect as of the date for commencement of performance of the small business development center's grant.

⁷⁶⁶ Section 1402 of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2550) provides:

SEC. 1402. GRANTS FOR SBDCS.

(a) **IN GENERAL.**—The Administrator may make grants to small business development centers under section 21 of the Small Business Act (15 U.S.C. 648) to provide targeted technical assistance to small business concerns seeking access to capital or credit, Federal procurement opportunities, energy efficiency audits to reduce energy bills, opportunities to export products or provide services to foreign customers, adopting, making innovations in, and using broadband technologies, or other assistance.

(b) **ALLOCATION.**—

(1) **IN GENERAL.**—Subject to paragraph (2), and notwithstanding the requirements of section 21(a)(4)(C)(iii) of the Small Business Act (15 U.S.C. 648(a)(4)(C)(iii)), the amount appropriated to carry out this section shall be allocated under the formula under section 21(a)(4)(C)(i) of that Act.

(2) **MINIMUM FUNDING.**—The amount made available under this section to each State shall be not less than \$325,000.

(3) **TYPES OF USES.**—Of the total amount of the grants awarded by the Administrator under this section—

(A) not less than 80 percent shall be used for counseling of small business concerns; and

(B) not more than 20 percent may be used for classes or seminars.

(c) **NO NON-FEDERAL SHARE REQUIRED.**—Notwithstanding section 21(a)(4)(A) of the Small Business Act (15 U.S.C. 648(a)(4)(A)), the recipient of a grant made under this section shall not be required to provide non-Federal matching funds.

(d) **DISTRIBUTION.**—Not later than 30 days after the date on which amounts are appropriated to carry out this section, the Administrator shall disburse the total amount appropriated.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Administrator

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(II) If the pro rata amount calculated under subclause (I) for any State is less than the minimum funding level under clause (iii), the Administration shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

(III) The aggregate amount calculated under subclause (II) shall be deducted from the amount calculated under subclause (I) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared to the total population of all such States.

(IV) The aggregate amount deducted under subclause (III) shall be added to the grants of those States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of a grant to any State shall not be reduced to an amount below the minimum funding level.

(ii) GRANT DETERMINATION.—The amount of a grant that a State is eligible to apply for under this subparagraph shall be the amount determined under clause (i), subject to any modifications required under clause (iii), and shall be based on the amount available for the fiscal year in which performance of the grant commences, but not including amounts distributed in accordance with clause (iv). The amount of a grant received by a State under any provision of this subparagraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subparagraph (A).

(iii) MINIMUM FUNDING LEVEL.—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this section, as follows:

(I) If the amount made available is not less than \$81,500,000 and not more than \$90,000,000, the minimum funding level shall be \$50,000,000. § 21(a)(4)(C)(iii)(III) to § 21(a)(4)(C)(v)(II)

(II) If the amount made available is less than \$81,500,000, the minimum funding level shall be the remainder of \$500,000 minus a percentage of \$500,000 equal to the percentage amount by which the amount made available is less than \$81,500,000.

(III) If the amount available is more than \$90,000,000, the minimum funding level shall be the sum of \$500,000 Plus a percentage of \$500,000 equal to the percentage amount by which the amount made available exceeds \$90,000,000.

\$50,000,000 to carry out this section.

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(iv) DISTRIBUTIONS.—Subject to clause (iii), if any State does not apply for, or use, its full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

(I) If the grant to any State is less than the amount received by that State in Fiscal year 2000, the Administration shall distribute such remaining funds, on a pro rata bases, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

(II) If any funds remain after the application of subclause (I), the remaining amount may be distributed as supplemental grants to any State, as the Administration determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (a)(3)(A).

(v) USE OF AMOUNTS.

(I) IN GENERAL.—Of the amounts made available in any fiscal year to carry out this section—

(aa) not more than \$500,000 may be used by the Administration to pay expenses enumerated in subparagraphs (B) through (D) of section 20(a)(1); and

(bb) not more than \$500,000 may be used by the Administration to pay the examination expenses enumerated in section 20(a)(1)(E).

(II) LIMITATION.—No funds described in subclause (I) may be used for examination expenses under section 20(a)(1)(E) if the usage would reduce the amount of grants made available under clause (i)(I) of this subparagraph to less than \$85,000,000 (after excluding any amounts provided in appropriations Acts, or § 21(a)(4)(C)(vi) to § 21(a)(5) ying report language,⁷⁶⁷ for specific institutions or for purposes other than the all business development center program) or would further reduce the amount of such grants below such amount.

(vi) EXCLUSIONS.—Grants provided to a State by the Administration or another Federal agency to carry out subsection (a)(6) or (c)(3)(G), or for supplemental grants set forth in clause (iv)(II) of this subparagraph, shall not be included in the calculation of maximum funding for a State under clause (ii) of this subparagraph.

(vii)⁷⁶⁸ AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph— Authorization of appropriations.

⁷⁶⁷ Reference to report language added by § 2203(b) of P.L. 107-20, approved July 24, 2001 (115 Stat. 170).

⁷⁶⁸ Clause 21(a)(4)(C)(vii) rewritten by § 122(b)(1) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-641). Text of former 21(a)(4)(C)(vii) is reprinted below:

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- (I) \$130,000,000 for fiscal year 2005; and
- (II) \$135,000,000 for fiscal year 2006.

(viii)⁷⁶⁹LIMITATION.—From the funds appropriated pursuant to clause (vii), the Administration shall reserve not less than \$1,000,000 in each fiscal year to develop portable assistance for startup and sustainability non-matching grant programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility down sizing or closing, which has resulted in the loss of jobs or small business instability. A non-matching grant under this clause shall not exceed \$100,000, and shall be used for small business development center personnel expenses and related small business programs and services.

(ix) STATE DEFINED.—In this subparagraph, the term “State.” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. § 21(a)(5)(A) to § 21(a)(6)(C)

(5)⁷⁷⁰ FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.— Federal contracts with SBDCs.

(A) IN GENERAL.—Subject to the conditions set forth in subparagraph (B), a small business development center may enter into a contract with a Federal department or agency to provide specific assistance to small business concerns.

AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subparagraph \$125,000,000 for each of fiscal years 2001, 2002, and 2003.

⁷⁶⁹ Clause 21(a)(4)(C)(viii) redesignated as 21(a)(4)(C)(ix) and new (viii) added by § 122(b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-641).

⁷⁷⁰Section 21(a)(5) rewritten by § 403 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4191). Text of former § 21(a)(5) is reprinted below:

In lieu of the matching funds required in paragraph (3), the Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government, to be comprised of not less than 50 per centum cash and not more than 50 percentum of indirect costs and in-kind contributions as follows:

- (A) for grants for performance commencing on or after October 1, 1987 if the applicant is located in a State which received its grant for performance under this section on or before August 1, 1984;
- (B) for grants for performance commencing on or after October 1, 1988 if the applicant is located in a State which receives its initial grant for performance under this section commencing after August 1, 1984 and prior to October 1, 1986; and

(C) for grants for performance commencing on or after October 1, 1986 if the applicant is located in a State which receives its initial grant for performance under this section commencing after October 1, 1986:

Provided, That this matching amount shall not include any indirect costs or in-kind contributions derived from any Federal program: Provided further, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a \$65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or \$200,000 whichever is greater.

(B) CONTRACT PREREQUISITES.—Before bidding on a contract described in subparagraph (A), a small business development center shall receive approval from the Associate Administrator of the small business development center program of the subject and general scope of the contract. Each approval under subparagraph (A) shall be based upon a determination that the contract will provide assistance to small business concerns and that performance of the contract will not hinder the small business development center in carrying out the terms of the grant received by the small business development center from the Administration.

(C) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under this paragraph shall not be subject to the matching funds or eligibility requirements of paragraph (4).

(D) ADDITIONAL PROVISION.—Notwithstanding any other provision of law, a contract for assistance under this paragraph shall not be applied to any Federal department or agency's small business, woman-owned business, or socially and economically disadvantaged business contracting goal under section 15(g).

(6)⁷⁷¹ Any applicant which is funded by the Administration as a Small Business Development Center may apply for an additional grant to be used solely to assist—

Additional grants.

(A) with the development and enhancement of exports by small business concerns;

(B) in technology transfer; and

(C)⁷⁷² with outreach, development, and enhancement of minority- and small business startups or expansions, HUBZone small business concerns, veteran- and small business startups or expansions, and women-owned small business startups or expansions, in communities impacted by base closings or military or corporate downsizing, or in rural or underserved communities;

§ 21(a)(7) to § 21(a)(7)(C)(i)(I)

as provided under subparagraphs (B) through (G) of subsection (c)(3). Applicants for such additional grants shall comply with all of the provisions of this section, including providing matching funds, except that funding under this paragraph shall be effective for any fiscal year to the extent provided in advance in appropriations Acts and shall be in addition to the dollar program limitations specified in paragraphs (4) and (5). No recipient of funds under this paragraph shall receive a grant which would exceed its pro rata share of a \$15,000,000 program based upon the populations to be served by the Small Business Development Center as compared to the total population of the United States. The minimum amount of eligibility for any State shall be \$100,000.

⁷⁷¹Paragraph 21(a)(6) added by subsection 8006(b)(3) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1557).

⁷⁷²Subparagraph 21(a)(6)(C) added by § 502(a)(4) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2623).

(7)⁷⁷³ PRIVACY REQUIREMENTS.—

Privacy requirements.

(A) IN GENERAL.—A small business development center, consortium of small business development centers, or contractor or agent of a small business development center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

(i) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

(ii) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center, but a disclosure under this clause shall be limited to the information necessary for such audit.

(B) ADMINISTRATOR USE OF INFORMATION.—This section shall not—

(i) restrict Administrator access to program activity data; or

(ii) prevent the Administrator from using client information to conduct client surveys.

(C) REGULATIONS.—

Regulations.

(i) IN GENERAL.—The Administrator shall issue regulations to establish standards—

(I) for disclosures with respect to financial aud § 21(a)(7)(c)(I) to § 21(b)(2)
under subparagraph (A)(ii); and

(II) for client surveys under subparagraph (B)(ii), including standards for oversight of such surveys and for dissemination and use of client information.

(ii) MAXIMUM PRIVACY PROTECTION.—Regulations under this subparagraph, [sic] shall, to the extent practicable, provide for the maximum amount of privacy protection.

(iii) INSPECTOR GENERAL.—Until the effective date of regulations under this subparagraph, any client survey and the use of such information shall

⁷⁷³ Paragraph 21(a)(7) added by § 142(a) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-646).

be approved by the Inspector General who shall include such approval in his semi-annual report.

(8)⁷⁷⁴ CYBERSECURITY ASSISTANCE.—

(A) IN GENERAL.—The Department of Homeland Security, and any other Federal department or agency in coordination with the Department of Homeland Security, may leverage small business development centers to provide assistance to small business concerns by disseminating information relating to cybersecurity risks and other homeland security matters to help small business concerns in developing or enhancing cybersecurity infrastructure, awareness of cyber threat indicators, and cyber training programs for employees.

(B) DEFINITIONS.—In this paragraph, the terms “cybersecurity risk” and “cyber threat indicator” have the meanings given such terms, respectively, under section 227(a) of the Homeland Security Act of 2002 (6 U.S.C. 148(a)).

“Cybersecurity risk.”
“Cyber threat indicator.”

(b)⁷⁷⁵ (1) Financial assistance shall not be made available to any applicant if approving such assistance would be inconsistent with a Plan for the area involved which has been adopted by an agency recognized by the State government as authorized to do so and approved by the Administration in accordance with the standards and requirements established pursuant to this section.

(2) An applicant may apply to participate in the program by submitting to the Administration for approval a Plan naming those authorized in subsection (a) to participate in the program, the geographic area to be served, the services that it would provide, the method for delivering services, a budget, and any other information and such other information as the Administration may require to insure that the applicant will carry out the activities eligible for assistance. The Administration is authorized to approve, conditionally approve or reject a Plan or combination of Plans submitted. In all cases, the Administration shall review Plans for conformity with the Plan submitted pursuant to paragraph (1) of this subsection, and with a view toward providing small business with the most comprehensive and coordinated assistance in the State or part thereof to be served.

Plan, submission to SBA.

Review.

§ 21(b)(3) to § 21(b)(3)(B)(iv)

(3)⁷⁷⁶ ASSISTANCE TO OUT-OF-STATE SMALL BUSINESS CONCERNS.—

Assistance to out-of-state businesses.

⁷⁷⁴ New paragraph 21(a)(8) added by § 1843 of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2664).

⁷⁷⁵ P.L. 98-395, approved Aug. 21, 1984 (98 Stat. 1366), struck prior limitation to fiscal years 1981-1983, and made applicability unlimited.

⁷⁷⁶ Paragraph 21(b)(3) reorganized and subparagraph (B) added by § 2103(a) of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 690). Section 2103(b) of P.L. 114-88 provides:

(b) SENSE OF CONGRESS.—It is the sense of Congress that, subject to the availability of funds, the Administrator of the Small Business Administration should, to the extent practicable, ensure that a small business development center is appropriately reimbursed for any legitimate expenses incurred in carrying out activities under section 21(b)(3)(B) of the Small Business Act, as added by subsection (a).

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(A) IN GENERAL.—At the discretion of the Administration, the Administration is authorized to permit a small business development center to provide advice, information and assistance, as described in subsection (c), to small businesses located outside the State, but only to the extent such businesses are located within close geographical proximity to the small business development center, as determined by the Administration.

(B) DISASTER RECOVERY ASSISTANCE.—

(i) IN GENERAL.—At the discretion of the Administrator, the Administrator may authorize a small business development center to provide advice, information, and assistance, as described in subsection (c), to a small business concern located outside of the State, without regard to geographic proximity to the small business development center, if the small business concern is located in an area for which the President has declared a major disaster.

(ii) TERM.—

(I) IN GENERAL.—A small business development center may provide advice, information, and assistance to a small business concern under clause (i) for a period of not more than 2 years after the date on which the President declared a major disaster for the area in which the small business concern is located.

(II) EXTENSION.—The Administrator may, at the discretion of the Administrator, extend the period described in subclause (I).

(iii) CONTINUITY OF SERVICES.—A small business development center that provides counselors to an area described in clause (i) shall, to the maximum extent practicable, ensure continuity of services in any State in which the small business development center otherwise provides services.

§ 21(c)(1)

(iv) ACCESS TO DISASTER RECOVERY FACILITIES.—For purposes of this subparagraph, the Administrator shall, to the maximum extent practicable, permit the personnel of a small business development center to use any site or facility designated by the Administrator for use to provide disaster recovery assistance.

(c) ⁷⁷⁷ (1) Applicants receiving grants under this section shall assist small businesses in solving problems concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development, and other disciplines required for small business growth and expansion, innovation, increased productivity, and management improvement, and for decreasing industry economic concentrations. Applicants receiving grants under this section may also assist small businesses by providing, where appropriate, education on the requirements applicable to small businesses under the

Problem-solving assistance.

⁷⁷⁷ Section 1203 of P.L. 110-140, approved Dec. 19, 2007 (121 Stat. 1766) provides:

(a) DEFINITIONS.—In this section—

- (1) the terms “Administration” and “Administrator” mean the Small Business Administration and the Administrator thereof, respectively;
- (2) the term “association” means the association of small business development centers established under section 21(a)(3)(A) of the Small Business Act;
- (3) the term “disability” has the meaning given that term in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102);
- (4) the term “Efficiency Program” means the Small Business Energy Efficiency Program established under subsection (c)(1);
- (5) the term “electric utility” has the meaning given that term in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602);
- (6) the term “high performance green building” has the meaning given that term in section 401 [of P.L. 110-140];
- (7) the term “on-bill financing” means a low interest or no interest financing agreement between a small business concern and an electric utility for the purchase or installation of equipment, under which the regularly scheduled payment of that small business concern to that electric utility is not reduced by the amount of the reduction in cost attributable to the new equipment and that amount is credited to the electric utility, until the cost of the purchase or installation is repaid;
- (8) the term “small business concern” has the same meaning as in section 3 of the Small Business Act;
- (9) the term “small business development center” means a small business development center described in section 21 of the Small Business Act;
- (10) the term “telecommuting” means the use of telecommunications to perform work functions under circumstances which reduce or eliminate the need to commute;
- (11) the term “Telecommuting Pilot Program” means the pilot program established under subsection (d)(1)(A); and
- (12) the term “veteran” has the meaning given that term in section 101 of title 38, United States Code.

(b) IMPLEMENTATION OF SMALL BUSINESS ENERGY EFFICIENCY PROGRAM.—

- (1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Administrator shall promulgate final rules establishing the Government-wide program authorized under subsection (d) of section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307) that ensure compliance with that subsection by not later than 6 months after such date of enactment.
- (2) PROGRAM REQUIRED.—The Administrator shall develop and coordinate a Government-wide program, building on the Energy Star for Small Business program, to assist small business concerns in—
 - (A) becoming more energy efficient;
 - (B) understanding the cost savings from improved energy efficiency; and
 - (C) identifying financing options for energy efficiency upgrades.
- (3) CONSULTATION AND COOPERATION.—The program required by paragraph (2) shall be developed and coordinated—
 - (A) in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency; and
 - (B) in cooperation with any entities the Administrator considers appropriate, such as industry trade associations, industry members, and energy efficiency organizations.
- (4) AVAILABILITY OF INFORMATION.—The Administrator shall make available the information and materials

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regulations issued under section 38 of the Arms Export Control Act (22 U.S.C. 2778) and on compliance with those requirements.⁷⁷⁸

(2) A small business development center shall provide services as close as possible to small businesses by providing extension services and utilizing satellite locations when necessary. The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small business which the center is intended to serve. To the extent possible, it also shall make full use of other Federal and State government programs that are concerned with aiding small business. A small business development center shall have—

Staff and
access
requirements.

developed under the program required by paragraph (2) to—

- (A) small business concerns, including smaller design, engineering, and construction firms; and
- (B) other Federal programs for energy efficiency, such as the Energy Star for Small Business program.

(5) STRATEGY AND REPORT.—

(A) STRATEGY REQUIRED.—The Administrator shall develop a strategy to educate, encourage, and assist small business concerns in adopting energy efficient building fixtures and equipment.

(B) REPORT.—Not later than December 31, 2008, the Administrator shall submit to Congress a report containing a plan to implement the strategy developed under subparagraph (A).

(c) SMALL BUSINESS SUSTAINABILITY INITIATIVE.—

(1) AUTHORITY.—The Administrator shall establish a Small Business Energy Efficiency Program to provide energy efficiency assistance to small business concerns through small business development centers.

(2) SMALL BUSINESS DEVELOPMENT CENTERS.—

(A) IN GENERAL.—In carrying out the Efficiency Program, the Administrator shall enter into agreements with small business development centers under which such centers shall—

- (i) provide access to information and resources on energy efficiency practices, including on-bill financing options;
- (ii) conduct training and educational activities;
- (iii) offer confidential, free, one-on-one, in-depth energy audits to the owners and operators of small business concerns regarding energy efficiency practices;
- (iv) give referrals to certified professionals and other providers of energy efficiency assistance who meet such standards for educational, technical, and professional competency as the Administrator shall establish;
- (v) to the extent not inconsistent with controlling State public utility regulations, act as a facilitator between small business concerns, electric utilities, lenders, and the Administration to facilitate on-bill financing arrangements;
- (vi) provide necessary support to small business concerns to—

(I) evaluate energy efficiency opportunities and opportunities to design or construct high performance green buildings;

(II) evaluate renewable energy sources, such as the use of solar and small wind to supplement power consumption;

(III) secure financing to achieve energy efficiency or to design or construct high performance green buildings; and

(IV) implement energy efficiency projects;

(vii) assist owners of small business concerns with the development and commercialization of clean technology products, goods, services, and processes that use renewable energy sources, dramatically reduce the use of natural resources, and cut or eliminate greenhouse gas emissions through—

(I) technology assessment;

(II) intellectual property;

(III) Small Business Innovation Research submissions under section 9 of the Small Business Act;

(IV) strategic alliances;

(V) business model development; and

(VI) preparation for investors; and

(viii) help small business concerns improve environmental performance by shifting to less hazardous materials and reducing waste and emissions, including by providing assistance for small business concerns to adapt the materials they use, the processes they operate, and the products and services they produce.

(B) REPORTS.—Each small business development center participating in the Efficiency Program shall submit to the Administrator and the Administrator of the Environmental Protection Agency an annual report that includes—

- (i) a summary of the energy efficiency assistance provided by that center under the Efficiency Program;

(A)⁷⁷⁹ a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;

(B) access to business analysts to counsel, assist, and inform small business clients;

(C) access to technology transfer agents to provide state of art technology to small businesses through coupling with national and regional technology data sources;

(ii) the number of small business concerns assisted by that center under the Efficiency Program;

(iii) statistics on the total amount of energy saved as a result of assistance provided by that center under the Efficiency Program; and

(iv) any additional information determined necessary by the Administrator, in consultation with the association.

(C) REPORTS TO CONGRESS.—Not later than 60 days after the date on which all reports under subparagraph (B) relating to a year are submitted, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report summarizing the information regarding the Efficiency Program submitted by small business development centers participating in that program.

(3) ELIGIBILITY.—A small business development center shall be eligible to participate in the Efficiency Program only if that center is certified under section 21(k)(2) of the Small Business Act.

(4) SELECTION OF PARTICIPATING STATE PROGRAMS.—From among small business development centers submitting applications to participate in the Efficiency Program, the Administrator—

(A) shall, to the maximum extent practicable, select small business development centers in such a manner so as to promote a nationwide distribution of centers participating in the Efficiency Program; and

(B) may not select more than 1 small business development center in a State to participate in the Efficiency Program.

(5) MATCHING REQUIREMENT.—Subparagraphs (A) and (B) of section 21(a)(4) of the Small Business Act shall apply to assistance made available under the Efficiency Program.

(6) GRANT AMOUNTS.—Each small business development center selected to participate in the Efficiency Program under paragraph (4) shall be eligible to receive a grant in an amount equal to—

(A) not less than \$100,000 in each fiscal year; and

(B) not more than \$300,000 in each fiscal year.

(7) EVALUATION AND REPORT.—The Comptroller General of the United States shall—

(A) not later than 30 months after the date of disbursement of the first grant under the Efficiency Program, institute an evaluation of that program; and

(B) not later than 6 months after the date of the initiation of the evaluation under subparagraph (A), submit to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, a report containing—

(i) the results of the evaluation; and

(ii) any recommendations regarding whether the Efficiency Program, with or without modification, should be extended to include the participation of all small business development centers.

(8) GUARANTEE.—To the extent not inconsistent with State law, the Administrator may guarantee the timely payment of a loan made to a small business concern through an on-bill financing agreement on such terms and conditions as the Administrator shall establish through a formal rule making, after providing notice and an opportunity for comment.

(9) IMPLEMENTATION.—Subject to amounts approved in advance in appropriations Acts and separate from amounts approved to carry out section 21(a)(1) of the Small Business Act, the Administrator may make grants or enter into cooperative agreements to carry out this subsection.

(10) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to make grants and enter into cooperative agreements to carry out this subsection.

(11) TERMINATION.—The authority under this subsection shall terminate 4 years after the date of disbursement of the first grant under the Efficiency Program.

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- (D) access to information specialists to assist in providing information searches and referrals to small business;
- (E) access to part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises;
- (F) access to laboratory and adaptive engineering facilities; and

(d) SMALL BUSINESS TELECOMMUTING.—

(1) PILOT PROGRAM.—

(A) IN GENERAL.—The Administrator shall conduct, in not more than 5 of the regions of the Administration, a pilot program to provide information regarding telecommuting to employers that are small business concerns and to encourage such employers to offer telecommuting options to employees.

(B) SPECIAL OUTREACH TO INDIVIDUALS WITH DISABILITIES.—In carrying out the Telecommuting Pilot Program, the Administrator shall make a concerted effort to provide information to—

- (i) small business concerns owned by or employing individuals with disabilities, particularly veterans who are individuals with disabilities;
- (ii) Federal, State, and local agencies having knowledge and expertise in assisting individuals with disabilities, including veterans who are individuals with disabilities; and
- (iii) any group or organization, the primary purpose of which is to aid individuals with disabilities or veterans who are individuals with disabilities.

(C) PERMISSIBLE ACTIVITIES.—In carrying out the Telecommuting Pilot Program, the Administrator may—

- (i) produce educational materials and conduct presentations designed to raise awareness in the small business community of the benefits and the ease of telecommuting;
- (ii) conduct outreach—
 - (I) to small business concerns that are considering offering telecommuting options; and
 - (II) as provided in subparagraph (B); and
- (iii) acquire telecommuting technologies and equipment to be used for demonstration purposes.

(D) SELECTION OF REGIONS.—In determining which regions will participate in the Telecommuting Pilot Program, the Administrator shall give priority consideration to regions in which Federal agencies and private-sector employers have demonstrated a strong regional commitment to telecommuting.

(2) REPORT TO CONGRESS.—Not later than 2 years after the date on which funds are first appropriated to carry out this subsection, the Administrator shall transmit to the Committee on Small Business and Entrepreneurship of the Senate and the committee on Small Business of the House of Representatives a report containing the results of an evaluation of the Telecommuting Pilot Program and recommendations regarding whether the pilot program, with or without modification, should be extended to include the participation of all regions of the Administration.

(3) TERMINATION.—The Telecommuting Pilot Program shall terminate 4 years after the date on which funds are first appropriated to carry out this subsection.

(4) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administration \$5,000,000 to carry out this subsection.

⁷⁷⁸ Last sentence added by § 823(a) of P.L. 113-291, approved Dec. 19, 2014 (128 Stat. 3436).

⁷⁷⁹ Sentence following footnote signal inserted in lead-in of par. (2) and substituted for prior language in subpar. (2)(A). Prior language omitted expenditure authority for staff director. See §§ 2(4) and (5) of P.L. 98-395, approved Aug. 21, 1984 (98 Stat. 1366).

(G)⁷⁸⁰ access to cybersecurity specialists to counsel, assist, and inform small business concern clients, in furtherance of the Small Business Development Center Cyber Strategy developed under section 1841(a) of the National Defense Authorization Act for Fiscal Year 2017.

(3) Services provided by a small business development center shall include, but shall not be limited to— Services provided.

(A) furnishing one-to-one individual counseling to small businesses, including— Individual counseling.

⁷⁸⁰ New subparagraph 21(c)(2)(G) added by § 1842(2) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2664). Section 1841 of P.L. 114-328 provides:

SEC. 1841. SMALL BUSINESS DEVELOPMENT CENTER CYBER STRATEGY AND OUTREACH

(a) SMALL BUSINESS DEVELOPMENT CENTER CYBER STRATEGY.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Administrator of the Small Business Administration and the Secretary of Homeland Security shall work collaboratively to develop a cyber strategy for small business development centers to be known as the “Small Business Development Center Cyber Strategy.”

(2) CONSULTATION.—In developing the strategy under this subsection, the Administrator of the Small Business Administration and the Secretary of Homeland Security shall consult with entities representing the concerns of small business development centers, including any association recognized under section 21(a)(3)(A) of the Small Business Act (15 U.S.C. 648(a)(3)(A)).

(3) CONTENT.—The strategy required under paragraph (1) shall include, at minimum, the following:

(A) Plans for allowing small business development centers (hereinafter in this paragraph referred to as “SBDCs”) to access existing cyber programs of the Department of Homeland Security and other appropriate Federal agencies to enhance services and streamline cyber assistance to small business concerns.

(B) To the extent practicable, methods for providing counsel and assistance to improve a small business concern’s cybersecurity infrastructure, awareness of cyber threat indicators, and cyber training programs for employees, including—

(i) working to ensure individuals are aware of best practices in the areas of cybersecurity, awareness of cyber threat indicators, and cyber training;

(ii) working with individuals to develop cost-effective plans for implementing best practices in these areas;

(iii) entering into agreements, where practical, with Information Sharing and Analysis Centers or similar entities that share cyber information to gain an awareness of actionable cyber threat indicators that may be beneficial to small business concerns; and

(iv) providing referrals to area specialists when necessary.

(C) An analysis of—

(i) how Federal Government programs, projects, and activities can be leveraged by SBDCs to improve access to high-quality cyber support for small business concerns;

(ii) additional resources SBDCs may need to effectively carry out their role; and

(iii) how SBDCs can leverage existing partnerships and develop new partnerships with Federal, State, and local government entities as well as private entities to improve the quality of cyber support services to small business concerns.

(4) DELIVERY OF STRATEGY.—Not later than 1 year after the date of the enactment of this Act, the Small Business Administrator and the Secretary of Homeland Security shall submit to the Committees on Homeland Security and Small Business of the House of Representatives and the Committees on Homeland Security and Governmental Affairs and Small Business and Entrepreneurship of the Senate the Small Business Development Center Cyber Strategy developed under paragraph (1).

(5) DEFINITIONS.—In this subsection, the following definitions shall apply:

(A) CYBER THREAT INDICATOR.—The term “cyber threat indicator” has the meaning given such term in section 227(a) of the Homeland Security Act of 2002 (6 U.S.C. 148(a)).

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(i)⁷⁸¹ working with individuals to increase awareness of basic credit practices and credit requirements;

(ii) working with individuals to develop business Plans, financial packages, credit applications, and contract proposals;

(iii) working with the Administration to develop and provide informational tools for use in working with individuals on pre-business startup Planning, existing business expansion, and export Planning; and

(iv) working with individuals referred by the local offices of the Administration and Administration participating lenders;

(B)⁷⁸² assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small businesses, including — Assisting in technology transfer, R & D.

(i) working to increase the access of small businesses to the capabilities of automated flexible manufacturing systems;

(ii) working through existing networks and developing new networks for technology transfer that encourage partnership between the small business and academic communities to help commercialize university-based research and development and introduce university-based engineers and scientists to their counterparts in small technology-based firms; and

(iii) exploring the viability of developing shared production facilities, under appropriate circumstances;

(C)⁷⁸³ in cooperation with the Department of Commerce and other relevant Federal agencies, actively assisting small businesses in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business firms and prescreened foreign buyers, assisting small businesses to participate in international trade shows, assisting small businesses in obtaining export financing, and facilitating the development or reorientation of marketing and production strategies; where appropriate, the Small Business Development Center and the — Export assistance.

(B) SMALL BUSINESS DEVELOPMENT CENTER.—The term “small business development center” has the meaning given such term in section 3 of the Small Business Act (15 U.S.C. 632).

⁷⁸¹ Clauses (i) through (iv) were added by § 502(b)(1)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2623).

⁷⁸² Subparagraph 21(c)(3)(B) rewritten by subsection 8006(b)(4) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1558). Prior subparagraph (B) read: “assisting in technology transfer, research, and coupling from existing sources to small businesses”.

⁷⁸³ Subparagraphs 21(c)(3)(C) through (H) redesignated as 21(c)(3)(H) through (M) respectively, and new subparagraphs 21(c)(3)(C) through (G) added by subsection 8006(b)(5) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1558).

SMALL BUSINESS ACT

Administration⁷⁸⁴ may work in cooperation with the State to establish a State international trade center for these purposes;

(D)⁷⁸⁵ developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small businesses;

Export-
Import Bank
information.

(E) working closely with the small business community, small business consultants, State agencies, universities and other appropriate groups to make translation services more readily available to small business firms doing business, or attempting to develop business, in foreign markets;

(F) in providing assistance under this subsection, applicants shall cooperate with the Department of Commerce and other relevant Federal agencies to increase access to available export market information systems, including the CIMS system;

(G)⁷⁸⁶ assisting small businesses to develop and implement strategic business Plans to timely and effectively respond to the planned closure (or reduction) of a Department of Defense facility within the community, or actual or projected reductions in such firms' business base due to the actual or projected termination (or reduction) of a Department of Defense program or a contract in support of such program—

Assisting
businesses affected
by base closures.

(i) by developing broad economic assessments of the adverse impacts of—

(I) the closure (or reduction) of the Department of Defense facility on the small business concerns providing goods or services to such facility or to the military and civilian personnel currently stationed or working at such facility; and

(II) the termination (or reduction) of a Department of Defense program (or contracts under such program) on the small business concerns participating in such program as a prime contractor, subcontractor or supplier at any tier;

(ii) by developing, in conjunction with appropriate Federal, State, and local governmental entities and other private sector organizations, the parameters

⁷⁸⁴ Phrase “and the Administration” added by § 502(b)(1)(C) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat.2623).

⁷⁸⁵ Former subparagraph 21(c)(3)(D) deleted by § 212(1) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 998), and subparagraphs (E)-(G) redesignated as (D)-(F). Text of former subparagraph 21(c)(3)(D):

assisting small businesses in developing and implementing marketing and production strategies that will enable them to better compete within the domestic market

⁷⁸⁶ New subparagraph (G) added by § 212(3) of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 998).

of a transition adjustment program adaptable to the needs of individual small business concerns;

(iii) by conducting appropriate programs to inform the affected small business community regarding the anticipated adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms; and

(iv) by assisting small business concerns to develop and implement an individualized transition business Plan.

(H) maintaining current information concerning Federal, State, and local regulations that affect small businesses and counsel small businesses on methods of compliance. Counseling and technology development shall be provided when necessary to help small businesses find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations;

Compliance assistance.

(I) coordinating and conducting research into technical and general small business problems for which there are no ready solutions;

(J) providing and maintaining a comprehensive library that contains current information and statistical data needed by small businesses;

(K) maintaining a working relationship and open communications with the financial and investment communities, legal associations, local and regional private consultants, and local and regional small business groups and associations in order to help address the various needs of the small business community;

(L) conducting in-depth surveys for local small business groups in order to develop general information regarding the local economy and general small business strengths and weaknesses in the locality;

(M)⁷⁸⁷ in cooperation with the Department of Commerce, the Administration and other relevant Federal agencies, actively assisting rural small businesses in exporting by identifying and developing potential export markets for rural small businesses, facilitating export transactions for rural small businesses, developing linkages between United States' rural small businesses and prescreened foreign buyers, assisting rural small businesses to participate in international trade shows, assisting rural small businesses in obtaining export financing and developing marketing and production strategies;

Rural small business, export assistance.

(N) assisting rural small businesses—

Assist rural small businesses.

(i) in developing marketing and production strategies that will enable them to better compete in the domestic market—

⁷⁸⁷Subparagraph 21(c)(3)(M) redesignated as 21(c)(3)(P) and new subparagraphs 21(c)(3)(M) through (O) added by § 303 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2828).

SMALL BUSINESS ACT

(ii) by providing technical assistance needed by rural small businesses;

(iii) by making available managerial assistance to rural small business concerns; and

(iv) by providing information and assistance in obtaining financing for business startups and expansion;

(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business in developing the tourism potential of rural communities by—

(i) identifying the cultural, historic, recreational, and scenic resources of such communities;

(ii) providing assistance to small businesses in developing tourism marketing and promotion Plans relating to tourism in rural areas; and

(iii) assisting small business concerns to obtain capital for starting or expanding businesses primarily serving tourists;

(P) maintaining lists of local and regional private consultants to whom small businesses can be referred;

(Q)⁷⁸⁸ providing information to small business concerns regarding compliance with regulatory requirements;

(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a)⁷⁸⁹ of the Small Business Regulatory Enforcement Fairness Act of 1996;

(S)⁷⁹⁰ providing small business owners with access to a wide variety of export-related information by establishing on-line computer linkages between small business development centers and an international trade data information network with ties to the Export Assistance Center program; and

⁷⁸⁸Subparagraphs 21(c)(3)(Q) and (R) added by § 214(a)(3) of P.L. 104-121, approved March 29, 1996 (110 Stat. 859).

⁷⁸⁹The section referred to, § 312(a), should be § 212(a) of P.L. 104-121.

⁷⁹⁰New subparagraph 21(c)(3)(S) added by § 506(a)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624). Subsection 506(b) of the same law provides: “AUTHORIZATION OF APPROPRIATIONS - There is authorized to be appropriated to carry out section 21(c)(3)(S) of the Small Business Act (15 U.S.C. 648(c)(3)(S)), as added by this section, \$1,500,000 for each fiscal years 1998 and 1999.”

SMALL BUSINESS ACT

(T)⁷⁹¹ providing information and assistance to small business concerns with respect to establishing drug-free workplace programs on or before October 1, 2006.

Drug-free
workplace,
assistance.

(U)⁷⁹² encouraging and assisting the provision of succession planning to small business concerns with a focus on transitioning to cooperatives, as defined in section 7(a)(35), and qualified employee trusts (collectively referred to in this subparagraph as “employee-owned business concerns”), including by—

(i) providing training to individuals to promote the successful management, governance, or operation of a business purchased by those individuals in the formation of an employee-owned business concern;

(ii) assisting employee-owned business concerns that meet applicable size standards established under section 3(a) with education and technical assistance with respect to financing and contracting programs administered by the Administration;

(iii) coordinating with lenders on conducting outreach on financing through programs administered by the Administration that may be used to support the transition of ownership to employees;

(iv) supporting small business concerns in exploring or assessing the possibility of transitioning to an employee-owned business concern; and

(v) coordinating with the cooperative development centers of the Department of Agriculture, the land grant extension network, the Manufacturing Extension Partnership, community development financial institutions, employee ownership associations and service providers, and local, regional and national cooperative associations.

⁷⁹¹New subparagraph 21(c)(3)(T) added by § 905 of P.L. 105-277, approved Oct. 21, 1998 (112 Stat. 2681-813). The sunset date was extended from 2000 to 2003 by § 503(e) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). The sunset date was further extended by § 122(a) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-641).

⁷⁹² New subparagraph 21(c)(3)(U) added by § 862(e)(2)(B)(iii) of P.L. 115-232, approved August 13, 2018 (Stat.). Sections 862(e)(1) and (2)(A) provide:

- (1) ESTABLISHMENT.—The Administrator shall establish a Small Business Employee Ownership and Cooperatives Promotion Program to offer technical assistance and training on the transition to employee ownership through cooperatives and qualified employee trusts.
- (2) SMALL BUSINESS DEVELOPMENT CENTERS.—
- (A) IN GENERAL.—In carrying out the program established under subsection (a)[sic, should probably read “paragraph (1)”], the Administrator shall enter agreements with small business development centers under which the centers shall—
- (i) provide access to information and resources on employee ownership through cooperatives or qualified employee trusts as a business succession strategy;
- (ii) conduct training and educational activities; and
- (iii) carry out the activities described in subparagraph (U) of section 21(c)(3) of the Small Business Act (15 U.S.C. 648(c)(3)).

SMALL BUSINESS ACT

(4)⁷⁹³ A small business development center shall continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community.

(5) In addition to the methods prescribed in section 21(c)(2), a small business development center shall utilize and compensate as one of its resources qualified small business vendors, including but not limited to, private management consultants, private consulting engineers and private testing laboratories, to provide services as described in this subsection to small businesses on behalf of such small business development center.

Qualified
small
business
vendors.

(6)⁷⁹⁴ In any State (A) in which the Administration has not made a grant pursuant to paragraph (1) of subsection (a), or (B) in which no application for a grant has been made by a Small Business Development Center pursuant to paragraph (6) of such subsection within 60 days after the effective date of any grant under subsection (a)(1) to such center or the date the Administration notifies the grantee funded under subsection (a)(1) that funds are available for grant applications pursuant to subsection (a)(6), whichever date occurs last, the Administration may make grants to a non-profit entity in that State to carry out the activities specified in paragraph (6) of subsection (a). Any such applicants shall comply with the matching funds requirement of paragraph (4) of subsection (a). Such grants shall be effective for any fiscal year only to the extent provided in advance in appropriations Acts, and each State shall be limited to the pro rata share provisions of paragraph (6) of subsection (a).

Grants to non-
profit entity.

(7) In performing the services identified in paragraph (3), the Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the local small business community, and appropriate State and local agencies.

(8) The Associate Administrator for Small Business Development Centers,⁷⁹⁵ in consultation with the Small Business Development Centers, shall develop and implement an information sharing system.⁷⁹⁶ Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration.

Information
sharing system.

Grants or
cooperative
agreements.

⁷⁹³ The formerly undesignated material following subparagraph 21(c)(3)(R) was designated as paragraph 21(c)(4) by § 502(b)(4) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624). Section 502(b)(3) of the same public law redesignated paragraphs 21(c)(4) through (7) as (5) through (8).

⁷⁹⁴ New paragraphs 21(c)(5) through 21(c)(7) added by § 8006(b)(6) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1559). The phrase "or the date ... occurs last" inserted by § 135(3) of P.L. 100-590, approved Nov. 3, 1988 (102 Stat. 3007). Paragraphs 21(c)(4) through (7) were redesignated 21(c)(5) through (8) by § 502(b)(3) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624).

⁷⁹⁵ Substituted for "Deputy Associate Administrator of the Small Business Development Center program" by § 106(a)(2)(A) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-731).

⁷⁹⁶ The following 3 sentences added by § 9(a) of P.L. 103-81, approved August 13, 1993 (107 Stat. 783).

The matching funds provisions of subsection (a) shall not be applicable to grants or cooperative agreements under this paragraph. The system shall

(A) allow Small Business Development Centers participating in the program to exchange information about their programs; and

(B) provide information central to technology transfer.

(d)⁷⁹⁷ Where appropriate, the Small Business Development Centers shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive Plan for enhancing the export potential of small businesses located within the State. This Plan may involve the cofunding and staffing of a State Office of International Trade within the State Small Business Development Center, using joint State and Federal funding, and any other appropriate measures directed at improving the export performances of small businesses within the State.

(e) Laboratories operated and funded by the Federal Government are authorized and directed to cooperate with the Administration in developing and establishing programs to support small business development centers by making facilities and equipment available; providing experiment station capabilities in adaptive engineering; providing library and technical information processing capabilities; and providing professional staff for consulting. The Administration is authorized to reimburse the laboratories for such services. Federal laboratories.

(f)⁷⁹⁸ The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers. National Science Foundation.

(g)⁷⁹⁹ NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AND REGIONAL TECHNOLOGY TRANSFER CENTERS.—The National Aeronautics and Space Administration and regional technology transfer centers supported by the National NASA and industrial application centers.

⁷⁹⁷Subsections 21(d) through (k) redesignated as 21(e) through (l), respectively, and new § 21(d) added by § 8006(b)(7) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1559).

⁷⁹⁸Subsection (f) substituted for prior language requiring NSF and its innovation centers to cooperate with SBDCs and report with recommendations annually to SBA and Congress on strengthening and funding of innovation centers. Section 2(6) of P.L. 98-395, approved Aug. 21, 1984 (98 Stat. 1366).

⁷⁹⁹ Subsection (g) rewritten by § 2121 of P.L. 104-66, approved Dec. 21, 1995 (109 Stat. 730). Text of former subsection (g) is reprinted below:

The National Aeronautics and Space Administration and industrial application centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in this program. The National Aeronautics and Space Administration shall report annually on the performance of such industrial application centers with recommendations to the Administration and the Congress on how such industrial application centers can be strengthened and expanded. The National Aeronautics and Space Administration shall include in its report to Congress information on the ability of industrial application centers to interact with the Nation's small business community and recommendations to the Administration on continued funding.

SMALL BUSINESS ACT

Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.

(h)⁸⁰⁰ ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—

Associate Administrator for SBDC.

(1) APPOINTMENT AND COMPENSATION.—The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS-17 of the General Schedule.

(2) DUTIES.—

Duties.

(A) IN GENERAL.—The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section.

(B) CONSULTATION REQUIREMENTS.—In carrying out the duties described in this subsection, the Associate Administrator shall confer with and seek the advice of the Board established by subsection (i) and Administration officials in areas concerned by the small business development centers; however, the Associate Administrator shall be responsible for the management and administration of the program and shall not be subject to the approval or concurrence of such Administration officials.

§ 21(i)(1) to
§ 21(k)

(i) (1) There is established a National Small Business Development Center Advisory Board (herein referred to as “Board”) which shall consist of nine members

National SBDC Advisory Board establishment.

⁸⁰⁰Subsection 21(h) rewritten by § 106(a)(1) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-731). Text of former § 21(h) is reprinted below:

- (1) The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall serve without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51, and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS-17 of the General Schedule.
- (2) The sole responsibility of the Deputy Associate Administrator for Management Assistance shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section. The Deputy Associate Administrator for Management Assistance shall confer with and seek the advice and counsel of the Board in carrying out the responsibilities described in this subsection.

appointed from civilian life by the Administrator and who shall be persons of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. No more than three members shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. At the time of the appointment of the Board, the Administrator shall designate one-third of the members and at least one from each category whose term shall end in two years from the date of appointment, a second third whose terms shall end in three years from the date of appointment, and the final third whose term shall end in four years from the date of appointment. Succeeding Boards shall have three-year terms, with one-third of the Board changing each year.

(2) The Board shall elect a Chairman and advise, counsel, and confer with the Associate Administrator for Small Business Development Centers⁸⁰¹ in carrying out the duties described in this section. The Board shall meet at least semiannually⁸⁰² and at the call of the Chairman of the Board. Each member of the Board shall be entitled to be compensated at the rate not in excess of their per diem equivalent of the highest rate of pay for individuals occupying the position under GS-18 of the General Schedule for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

(j) (1) Each small business development center shall⁸⁰³ establish an advisory board. Advisory board.

(2) Each small business development center advisory board shall elect a chairman and advise, counsel, and confer with the director of the small business development center on all policy matters pertaining to the operation of the small business development center, including who may be eligible to receive assistance from, and how local and regional private consultants may participate with the small business development center.

(k)⁸⁰⁴ PROGRAM EXAMINATION AND ACCREDITATION⁸⁰⁵.—

⁸⁰¹Substituted for “Deputy Associate Administrator for Management Assistance” by § 106(a)(2)(B) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732).

⁸⁰²“Semiannually” substituted for “quarterly” by § 2(7) of P.L. 98-395, approved Aug. 21, 1984 (98 Stat. 1366).

⁸⁰³“Shall” substituted for “may” by § 2(8) of P.L. 98-395, supra.

⁸⁰⁴Subsection (k) rewritten by § 404 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4191). Text of former section 21(k) is reprinted below:

Within six months of the date of enactment of the Small Business Development Center Improvement Act of 1984, the Administration shall develop and implement a program proposal for onsite evaluation of each Small Business Development Center. Such evaluation shall be conducted at least once every two years and shall provide for the participation of a representative of at least one other Small Business Development Center on a cost-reimbursement basis.

⁸⁰⁵ “Accreditation” substituted for “certification” throughout subsection 21(k) by § 142(b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-646).

SMALL BUSINESS ACT

(1) EXAMINATION.—Not later than 180 days after the date of enactment of this subsection, the Administration shall develop and implement a biennial programmatic and financial examination of each small business development center established pursuant to this section.

SBDC
examination.

(2) ACCREDITATION.—The Administration may provide financial support, by contract or otherwise, to the association authorized by subsection (a)(3)(A) for the purpose of developing a small business development center accreditation program.

SBDC
accreditation.

(3)⁸⁰⁶ EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.

(A) IN GENERAL.—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and accreditation program conducted pursuant to paragraphs (1) and (2).

(B) ACCREDITATION REQUIREMENT.—After September 30, 2000, the Administration may not renew or extend any cooperative agreement with a small business development center unless the center has been approved under the accreditation program conducted pursuant to this subsection, except that the Associate Administrator for Small Business Development Centers may waive such accreditation requirement, in the discretion of the Associate Administrator, upon a showing that the center is making a good faith effort to obtain certification.

Accreditation
requirement.

(l)⁸⁰⁷ CONTRACT AUTHORITY.—The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration [sic] has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore and affording the applicant an opportunity for a hearing, appeal, or other administrative proceeding under the provisions of chapter 5 of title 5, United States Code. If any contract or cooperative

Contract
authority.

⁸⁰⁶Paragraph 21(k)(3) rewritten by § 106(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). Text of former paragraph 21(k)(3) is reprinted below:

EXTENSION OR RENEWAL OF COOPERATIVE AGREEMENTS.—In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2).

⁸⁰⁷Subsection 21(l) rewritten by § 106(c) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-732). Text of former § 21(l) is reprinted below:

The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefor and affording the applicant an opportunity for a hearing, appeal or other administrative proceeding under the provisions of the Administrative Procedures Act.

SMALL BUSINESS ACT

agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis.⁸⁰⁸

§ 21(m) to
§ 21(n)(4)

(m)⁸⁰⁹ PROHIBITION ON CERTAIN FEES.—A small business development center shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling services under this section.

Prohibition
on certain
fees.

(n)⁸¹⁰ VETERANS ASSISTANCE AND SERVICES PROGRAM.—

(1) IN GENERAL.—A small business development center may apply for a grant under this subsection to carry out a veterans assistance and services program.

(2) ELEMENTS OF PROGRAM.—Under a program carried out with a grant under this subsection, a small business development center shall—

(A) create a marketing campaign to promote awareness and education of the services of the center that are available to veterans, and to target the campaign toward veterans, service-disabled veterans, military units, Federal agencies, and veterans organizations;

(B) use technology-assisted online counseling and distance learning technology to overcome the impediments to entrepreneurship faced by veterans and members of the Armed Forces; and

(C) increase coordination among organizations that assist veterans, including by establishing virtual integration of service providers and offerings for a one-stop point of contact for veterans who are entrepreneurs or owners of small business concerns.

(3) AMOUNT OF GRANTS.—A grant under this subsection shall be for not less than \$75,000 and not more than \$250,000.

Grant
amount.

(4) FUNDING.—Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter into cooperative agreements to carry out the provisions of this subsection.

§ 22 to
§ 22(a)(1)

§ 21A. [Repealed].⁸¹¹

⁸⁰⁸ The last sentence in section 21(l) was added by § 502(c) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624).

⁸⁰⁹ New subsection 21(m) was added by § 502(d) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2624).

⁸¹⁰ New subsection 21(n) added by § 107 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 627).

⁸¹¹ Section 21A added by § 9(a) of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2144). Section 9(b) of P.L. 101-515 provides that: “There is authorized to be appropriated to the Small Business Administration for each of fiscal years 1991 and 1992, \$1,200,000 to carry out the terms of section 21A of the Small Business Act.” Section 21A is repealed effective Oct. 1, 1992, per § 609(e) of P.L. 102-140, approved Oct. 28, 1991 (105 Stat. 826). The same section provides that “[n]otwithstanding any other law, no funds shall be appropriated to carry out section 21A of the Small Business Act after September 30, 1991.” See section

SEC. 22⁸¹² OFFICE OF INTERNATIONAL TRADE.

(a) ESTABLISHMENT.—

§ 22(a)(1)(A) to
§ 22(b)

(1) There is established within the Administration an Office of International Trade which shall implement the programs pursuant to this section⁸¹³ for the primary purposes of increasing—

(A) the number of small business concerns that export; and

28, added by § 609(d) of P.L. 102-140, approved Oct. 28, 1991 (105 Stat. 825), for text of the Pilot Technology Access Program. Text of repealed § 21A is reprinted below:

SMALL BUSINESS DEVELOPMENT CENTER TECHNICAL ASSISTANCE PROGRAM.

(a) The Administration is authorized to make grants to establish pilot programs at 5 Small Business Development Centers in order to increase access by small businesses in each center's service area to online data bases. The purpose of this program shall be to provide small businesses, in states selected to participate in this demonstration program, with improved online access to public and private technology, services and expertise, so as to accelerate the transfer of technology and expertise to small businesses and to improve the productivity and economic competitiveness of these small businesses.

(b) Any Small Business Development Center which is funded by the Administration is eligible to receive an additional grant to provide access to online data bases as described in subsection (a) providing it contributes at least a fifty percent matching contribution.

(c) The grants authorized by this section must be used to—

- (1) defray all or part of the cost of accessing data bases from private vendors for a limited period of time,
- (2) demonstrate to small businesses the benefits of accessing such data bases, and
- (3) train small businesses to use such data bases to access technical information and services.

⁸¹²New § 22 added by § 113 of P.L. 96-481, approved Oct. 21, 1980 (94 Stat. 2321) as part of “Small Business Export Expansion Act of 1980,” which is enacted in Title I, Part B of P.L. 96-481. See pages 983 and 984 of this Handbook.

⁸¹³ Language following the footnote signal and new paragraph 22(a)(2) added by § 1203(a) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2521). Section 1205(b) of P.L. 111-240 provides:

(b) STUDY AND REPORT ON FILLING GAPS IN HIGH-AND-LOW-EXPORT VOLUME AREAS.—

(1) STUDY AND REPORT.—Not later than 6 months after the date of enactment of this Act, and every 2 years thereafter, the Administrator shall—

(A) conduct a study of—

- (i) the volume of exports for each State;
- (ii) the availability of export finance specialists in each State;
- (iii) the number of exporters in each State that are small business concerns;
- (iv) the percentage of exporters in each State that are small business concerns;
- (v) the change, if any, in the number of exporters that are small business concerns in each State—
 - (I) for the first study conducted under this subparagraph, during the 10-yr period ending on the date of enactment of this Act; and
 - (II) for each subsequent study, during the 10-year period ending on the date the study is commenced;
- (vi) the total value of the exports in each State by small business concerns;
- (vii) the percentage of the total volume of exports in each State that is attributable to small business concerns; and
- (viii) the change, if any, in the percentage of the total volume of exports in each State that is attributable to small business concerns—

(I) for the first study conducted under this subparagraph, during the 10-year period ending on the date of enactment of this Act; and

(II) for each subsequent study, during the 10-year period ending on the date the study is commenced; and

(B) the volume of exports by small business concerns.

(2) ASSOCIATE ADMINISTRATOR.—the head of the Office shall be the Associate Administrator for International Trade, who shall be responsible to the Administrator.

(b)⁸¹⁴ TRADE DISTRIBUTION NETWORK.—The Associate Administrator, working in close cooperation with the Secretary of Commerce, the United States Trade Representative, the Secretary of Agriculture, the Secretary of State, the President of the Export-Import Bank of the United States, the President of the Overseas Private Investment Corporation, Director of the United States Trade and Development Agency, and other relevant Federal agencies, small business development centers engaged in export promotion efforts, Export Assistance centers, regional and district offices of the Administration, the small business community, and relevant State and local export promotion programs, shall—

§ 22(b)(1)(B) to
§ 22(c)(1)

(1) maintain a distribution network, using regional and district offices of the Administration, the small business development center network, networks of women’s business centers, the Service Corps of Retired Executives authorized by section 8(b)(1), and Export Assistance Centers, for programs relating to—

(A) trade promotion;

-
- (B) submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—
- (i) the results of the study under subparagraph (A);
 - (ii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the greatest volume of exports, based upon the most recent data available from the Department of Commerce;
 - (iii) to the extent practicable, a recommendation regarding how to eliminate gaps between the supply of and demand for export finance specialists in the 15 States that have the lowest volume of exports, based upon the most recent data available from the Department of Commerce; and
 - (iv) such additional information as the Administrator determines is appropriate.
- (2) DEFINITION.—In this subsection, the term “export finance specialist” has the meaning given that term in section 22(l) of the Small Business Act, as added by this title.

⁸¹⁴Subsection 22(b) redesignated as 22(c) and new § 22(b) added by § 8003(1) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1554). Subsection 22(b) completely rewritten by § 1204(a)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2522). Text of former subsection 22(b) is reprinted below:

The Office, working in close cooperation with the Department of Commerce and other relevant Federal agencies, Small Business Development Centers engaged in export promotion efforts, regional and local Administration offices, the small business community, and relevant State and local export promotion programs, shall—

- (1) assist in developing a distribution network for existing trade promotion, trade finance, trade adjustment, trade remedy assistance and trade data collection programs through use of the Administration’s regional and local offices and the Small Business Development Center network;
- (2) assist in the aggressive marketing of these programs and the dissemination of marketing information, including computerized marketing data, to the small business community; and
- (3) give preference in hiring or approving the transfer of any employee into the Office or to a position described in paragraph (8) below to otherwise qualified applicants who are fluent in a language in addition to English. Such employees shall accompany foreign trade missions if designated by the director of the Office and shall be available as needed to translate documents, interpret conversations and facilitate multilingual transactions including providing referral lists for translation services if required.

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- (B) trade finance;
- (C) trade adjustment assistance;
- (D) trade remedy assistance; and
- (E) trade data collection;

(2) aggressively market the programs described in paragraph (1) and disseminate information, including computerized marketing data, to small business concerns on exporting trends, market-specific growth, industry trends, and international prospects for exports;

(3) promote export assistance programs through the district and regional offices of the Administration, the small business development center network, Export Assistance Centers, the network of women's business centers, chapters of the Service Corps of Retired Executives, State and local export promotion programs, and partners in the private sector; and

(4) give preference in hiring or approving the transfer of any employee into the Office or to a position described in subsection (c)(9) to otherwise qualified applicants who are fluent in a language in addition to English, to—

(A) accompany small business concerns on foreign trade missions; and

(B) translate documents, interpret conversations, and facilitate multilingual transactions, including by providing referral lists for translation services, if required.

(c) **PROMOTION OF SALES OPPORTUNITIES.**—The Associate Administrator⁸¹⁵ shall promote sales opportunities for small business goods and services
§ 22(c)(1)(A) to § 22(c)(4) i. To accomplish this objective the office shall—

(1)⁸¹⁶ establish annual goals for the Office relating to—
(A) enhancing the exporting capability of small business concerns and small manufacturers;

(B) facilitating technology transfers;

⁸¹⁵ “Associate Administrator” inserted for “Office” by § 1204(a)(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2523).

⁸¹⁶ Paragraphs 22(c)(1) through (3) redesignated as 22(c)(6) through (8) respectively, and new paragraphs 22(c)(1) through (5) added by § 8003(2) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1554). Paragraphs 22(c)(1) through (8) redesignated as 22(c)(2) through (9) respectively, and new paragraph (1) added by § 1204(a)(2)(C) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2523).

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(C) enhancing programs and services to assist small business concerns and small manufacturers to compete effectively and efficiently in foreign markets;

(D) increasing the ability of small business concerns to access capital; and

(E) disseminating information concerning Federal, State, and private programs and initiatives;

(2) in cooperation with the Department of Commerce, other relevant agencies, regional and local Administration offices, the Small Business Development Center network, and State programs, develop a mechanism for—

Cooperation with other agencies.

(A) identifying sub-sectors of the small business community with strong export potential;

(B) identifying areas of demand in foreign markets;

(C) prescreening foreign buyers for commercial and credit purposes; and

(D) assisting in increasing international marketing by disseminating relevant information regarding market leads, linking potential sellers and buyers, and catalyzing the formation of joint ventures, where appropriate;

(3) in cooperation with the Department of Commerce, actively assist small businesses in forming and using⁸¹⁷ export trading companies, export management companies and research and development pools authorized under section 9 of this Act;

(4) work in conjunction with other Federal agencies, regional and district⁸¹⁸ offices of the Administration, the small business development center network, and the private sector to identify and publicize⁸¹⁹ translation services, including those available through colleges and universities participating in the small business development center program;

§ 22(c)(5) to § 22(c)(7)(D)

(5) work closely with the Department of Commerce and other relevant Federal agencies to—

⁸¹⁷ “[T]he formation and utilization of” replaced with current language by § 1204(a)(2)(E) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2523).

⁸¹⁸ “[L]ocal replaced with “district” by § 1204(a)(2)(F)(i) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2523).

⁸¹⁹ The term “existing” deleted by § 1204(a)(2)(F)(ii) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2523).

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(A) collect, analyze and periodically update relevant data regarding the small business share of United States exports and the nature of State exports (including the production of Gross State Product figures) and disseminate that data to the public and to Congress;

(B) make recommendations to the Secretary of Commerce and to Congress regarding revision of the North American Industry Classification System codes to encompass industries currently overlooked and to create North American Industry Classification System codes for export trading companies and export management companies;

(C) improve the utility and accessibility of existing export promotion programs for small business concerns; and

(D) increase the accessibility of the Export Trading Company contact facilitation service;

(6) make available to the small business community information regarding conferences on exporting and international trade sponsored by the public and private sector;

(7) provide small business concerns with access to up to date and complete export information by—

Export information.

(A) making available, at the regional and district offices of the Administration through cooperation with the Department of Commerce, export information, including, but not limited to, the worldwide information and trade system and world trade data reports;

(B) maintaining a list of financial institutions that finance export operations;

(C) maintaining a directory of all Federal, regional, State and private sector programs that provide export information and assistance to small business concerns; and

§ 22(c)(8) to
§ 22(c)(9)(G)

(D) preparing and publishing such reports as it determines to be necessary concerning market conditions, sources of financing, export promotion programs, and other information pertaining to the needs of small business exporting firms so as to insure that the maximum information is made available to small businesses in a readily usable form;

(8) encourage through cooperation with the Department of Commerce, greater small business participation in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce;

Trade fairs, shows, and missions.

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(9) facilitate decentralized delivery of export information and assistance to small business concerns by assigning⁸²⁰ primary responsibility for export development to one individual in each district office and providing each Administration regional office with a full-time export development specialist, who shall—

(A) assist small business concerns in obtaining export information and assistance from other Federal departments and agencies;

(B) maintain a directory of all programs which provide export information and assistance to small business concerns in the region;

(C) encourage financial institutions to develop and expand programs for export financing;

(D) provide advice to personnel of the Administration involved in making⁸²¹ loans, loan guarantees, and extensions and revolving lines of credit, and providing other forms of assistance to small business concerns engaged in exports;

(E) within one hundred and eighty days of their appointment, participate in training programs designed by the Administrator, in conjunction with the Department of Commerce and other Federal departments and agencies, to study export programs and to examine the needs of small business concerns for export information and assistance;

(F)⁸²² participate, jointly with employees of the Office, in an annual training program that focuses on current small business needs for exporting; and

§ 22(c)(10) to
§ 22(d)(2)

(G) develop and conduct training programs for exporters and lenders, in cooperation with the Export Assistance Centers, the Department of Commerce, the Department of Agriculture, small business development centers, women's business centers, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, and other relevant Federal agencies;

(10)⁸²³ make available on the website of the Administration the name and contact information of each individual described in paragraph (9);

⁸²⁰ Phrases “full-time export development specialists to each Administration regional office and assigning” and “person in each district office. Such specialists” deleted by § 1204(a)(2)(K)(i) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2524).

⁸²¹ Current language inserted for “Administration personnel involved in granting” by § 1204(a)(2)(K)(iii) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2524).

⁸²² New subparagraphs 22(c)(9)(F) and)(G) added by § 1204(a)(2)(K)(v) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2524).

⁸²³ New paragraphs 22(c)(10) through (13) added by § 1204(a)(2)(L) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2525).

(11) carry out a nationwide marketing effort using technology, online resources, training, and other strategies to promote exporting as a business development opportunity for small business concerns;

(12) disseminate information to the small business community through regional and district offices of the Administration, the small business development center network, Export Assistance Centers, the network of women’s business centers, chapters of the Service Corps of Retired Executives authorized by section 8(b)(1), State and local export promotion programs, and partners in the private sector regarding exporting trends, market-specific growth, industry trends, and prospects for exporting; and

(13) establish and carry out training programs for the staff of the regional and district offices of the Administration and resource partners of the administration on export promotion and providing assistance relating to exports.

(d)⁸²⁴ EXPORT FINANCING PROGRAMS.—

Export financing programs.

(1) IN GENERAL.—The Associate Administrator⁸²⁵ shall work in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other relevant Federal agencies, and the States to develop a program through which export specialists in the regional offices of the Administration, regional and local loan officers, and Small Business Development Center personnel can facilitate the access of small businesses to relevant export financing programs of the Export-Import Bank of the United States and to export and pre-export financing programs available from the Administration and the private sector

§ 22(d)(2)(A) to § 22(f)

(2)⁸²⁶ TRADE FINANCE SPECIALIST.—To accomplish the goal established under paragraph (1), the Associate Administrator shall—

Trade finance specialist.

(A) designate at least 1 individual within the Administration as a trade finance specialist to oversee international loan programs and assist Administration employees with trade finance issues; and

(B) work in cooperation with the Export-Import Bank and the small business community, including small business trade associations, to—

(i) aggressively market existing Administration export financing and pre-export financing programs;

⁸²⁴New subsections 22(d) through (f) added by § 8003(3) of P.L. 100-418, approved August 23, 1988 (102 Stat. 1555).

⁸²⁵“Office” replaced with “Associate Administrator” by § 1204(a)(3)(B) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2525).

⁸²⁶ Paragraph 22(d)(2)(A) added by § 1204(a)(3)(C) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2525). Former paragraphs (1) through (5) of subsection 22(d) were redesignated as clauses 22(d)(2)(B)(i) through (v) by the same section.

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(ii) identify financing available under various Export-Import Bank programs, and aggressively market those programs to small businesses;

(iii) assist in the development of financial intermediaries and facilitate the access of those intermediaries to existing financing programs;

(iv) promote greater participation by private financial institutions, particularly those institutions already participating in loan programs under this Act, in export finance; and

(v) provide for the participation of appropriate Administration personnel in training programs conducted by the Export-Import Bank.

(e) TRADE REMEDIES.—The Associate Administrator⁸²⁷ shall—

(1) work in cooperation with other Federal agencies and the private sector to counsel small businesses with respect to initiating and participating in any proceedings relating to the administration of the United States trade laws; and

(2) work with the Department of Commerce, the Office of the United States Trade Representative, and the International Trade Commission to increase access to trade remedy proceedings for small businesses.

⁸²⁷ “Office” replaced with “Associate Administrator” by § 1204(a)(4) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2525).

- § 22(f)(1) to
§ 22(g)

Congress.
- (f)⁸²⁸ REPORTING REQUIREMENT.—the Associate Administrator shall submit an annual report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that contains—
- (1) a description of the progress of the Office in implementing the requirements of this section;
 - (2) a detailed account of the results of export growth activities of the Administration, including the activities of each district and regional office of the Administration, based on the performance measures described in subsection (i);
 - (3) an estimate of the total number of jobs created or retained as a result of export assistance provided by the Administration and resource partners of the Administration;
 - (4) for any travel by the staff of the Office, the destination of such travel and the benefits to the Administration and to small business concerns resulting from such travel; and
 - (5) a description of the participation by the Office in trade negotiations.

⁸²⁸ Subsection 22(f) rewritten by § 1204(a)(5) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2525). Text of former 22(f) is reprinted: The Office shall report to the Committees on Small Business of the House of Representatives and the Senate on an annual basis as to its progress in implementing the requirements under this section. Section 1208 of P.L. 111-240 provides:

SEC. 1208. RURAL EXPORT PROMOTION.

Not later than 6 months after the date of enactment of this Act, the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Commerce, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report that contains—

- (1) a description of each program of the Administration that promotes exports by rural small business concerns, including—
 - (A) the number of rural small business concerns served by the program;
 - (B) the change, if any, in the number of rural small business concerns as a result of participation in the program during the 10-year period ending on the date of enactment of this Act;
 - (C) the volume of exports by rural small business concerns that participate in the program; and
 - (D) the change, if any, in the volume of exports by rural small businesses that participate in the program during the 10-year period ending on the date of enactment of this Act;
- (2) a description of the coordination between programs of the Administration and other Federal programs that promote exports by rural small business concerns;
- (3) recommendations, if any, for improving the coordination described in paragraph (2);
- (4) a description of any plan by the Administration to market the international trade financing programs of the Administration through lenders that—
 - (A) serve rural small business concerns; and
 - (B) are associated with financing programs of the Department of Agriculture;
- (5) recommendations, if any, for improving coordination between the counseling programs and export financing programs of the Administration, in order to increase the volume of exports by rural small business concerns; and
- (6) any additional information the Administrator determines is necessary.

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(g) STUDIES.—The Associate Administrator⁸²⁹, in cooperation, where appropriate, with the Division of Economic Research of the Office of Advocacy, and with other Federal agencies, shall undertake studies regarding the following issues and shall report to the Committees on Small Business of the House of Representatives and the Senate, and to relevant Committees of the House and Senate within 6 months after the date of enactment of the Small Business International Trade and Competitiveness Act with specific recommendations on—

§ 22(g)(1) to
§ 22(h)(2)

(1) the viability and cost of establishing an annual, competitive small business export incentive program similar to the Small Business Innovation Research program and alternative methods of structuring such a program;

(2) methods of streamlining trade remedy proceedings to increase access for, and reduce expenses incurred by, smaller firms;

(3) methods of improving the current small business foreign sales corporation tax incentives and providing small businesses with greater benefits from this initiative;

(4) methods of identifying potential export markets for United States small businesses; maintaining and disseminating current foreign market data; and devising a comprehensive export marketing strategy for United States small business goods and services, and shall include data on the volume and dollar amount of goods and services, identified by type, imported by United States trading partners over the past 10 years; and

(5) the results of a survey of major United States trading partners to identify the domestic policies, programs and incentives, and the private sector initiatives, which exist to encourage the formation and growth of small business.⁸³⁰

Survey of trading partners.

⁸²⁹ “Office” replaced with “Associate Administrator” by § 1204(a)(6) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2526).

⁸³⁰Section 8009 of P.L. 100-418 provides that:

Within one year after the date enactment of this Act, the Administrator of the Small Business Administration shall submit a written report to the Committees on Small Business of the House of Representatives and the Senate, prepared by the Administration in conjunction with the Bureau of Census and in cooperation with other relevant agencies, that would--

- (1) analyze to the extent possible the effect of increased outsourcing and other shifts in production arrangements on small firms, particularly manufacturing firms, within the United States subcontractor tier and to the extent that such data is not available determine methods by which such data may be collected;
- (2) assess the impact of specific economic policies, including, but not limited to, procurement, tax and trade policies, in facilitating outsourcing and other international production arrangements; and
- (3) make recommendations as to changes in Government policy that would improve the competitive position of smaller United States subcontractors, including recommendations as to incentives which could be provided to larger corporations to maximize their use of United States subcontractors and assist these subcontractors in changing production and marketing strategies and in obtaining new business in domestic and foreign markets.

(h)⁸³¹ DISCHARGE OF INTERNATIONAL TRADE RESPONSIBILITIES OF ADMINISTRATION.—The Administrator shall ensure that—

- (1) the responsibilities of the Administration regarding international trade are carried out by the Associate Administrator; § 22(h)(3) to § 22(j)
- (2) the Associate Administrator has sufficient resources to carry out such responsibilities; and
- (3) the Associate Administrator has direct supervision and control over—
 - (A) the staff of the Office; and
 - (B) any employee of the Administration whose principal duty station is an Export Assistance Center, or any successor entity.

(i)⁸³² EXPORT AND TRADE COUNSELING.—

- (1) DEFINITION.—In this subsection—
 - (A) the term “lead small business development center” means a small business development center that has received a grant from the Administration; and “Lead small business development center.”
 - (B) the term “lead women’s business center” means a women’s business center that has received a grant from the Administration. “Lead women’s business center.”

(2) CERTIFICATION PROGRAM.—The Administrator shall establish an export and trade counseling certification program to certify employees of lead small business development centers and lead women’s business centers in providing export assistance to small business concerns.

(3) NUMBER OF CERTIFIED EMPLOYEES.—the Administrator shall ensure that the number of employees of each lead small business development center who are certified in providing export assistance is not less than the lesser of—

- (A) 5; or
- (B) 10 percent of the total number of employees of the lead small business development center.

(4) REIMBURSEMENT FOR CERTIFICATION.—

⁸³¹ New subsection 22(h) added by § 1203(c) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2521). Section 1203(e) of that law provides: “Not later than 90 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall appoint an Associate Administrator for International Trade under section 22(a) of the Small Business Act (15 U.S.C. 649(a)), as added by this section.”.

⁸³² New subsection 22(i) added by § 1204(a)(7) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2526).

(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall reimburse a lead small business development center or a lead women’s business center for costs relating to the certification of an employee of the lead small business center [sic; should probably read “lead small business development center”] or lead women’s business center in providing export assistance under the program established under paragraph (2).

§ 22(j)(1) to
§ 22(j)(2)(C)

(B) LIMITATION.—The total amount reimbursed by the Administrator under subparagraph (A) may not exceed \$350,000 in any fiscal year.

(j)⁸³³ PERFORMANCE MEASURES.—

Performance
measures.

(1) IN GENERAL.—The Associate Administrator shall develop performance measures for the Administration to support export growth goals for the activities of the Office under this section that include—

(A) the number of small business concerns that—

- (i) receive assistance from the Administration;
- (ii) had not exported goods or services before receiving the assistance described in clause (i); and
- (iii) export goods or services;

(B) the number of small business concerns receiving assistance from the Administration that export goods or services to a market outside the United States into which the small business concern did not export before receiving the assistance;

(C) export revenues by small business concerns assisted by programs of the Administration;

(D) the number of small business concerns referred to an Export Assistance Center or a small business development center by the staff of the Office;

(E) the number of small business concerns referred to the Administration by an Export Assistance Center or a small business development center; and

(F) the number of small business concerns referred to the Department of Commerce, the Department of Agriculture, the Department of State, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, or the United States Trade and Development Agency by the staff of the Office, an Export Assistance Center, or a small business development center.

⁸³³ New subsection 22(j) added by § 1204(a)(7) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2526).

(2) JOINT PERFORMANCE MEASURES.—The Associate Administrator shall develop joint performance measures for the district offices of the Administration and the Export Assistance centers that include the number of export loans made under—

- (A) section 7(a)(16);
- (B) the Export Working Capital Program established under section 7(a)(14); § 22(j)(2)(D) to § 22(k)(2)(C)
- (C) the Preferred Lenders Program, as defined in section 7(a)(2)(C) (ii); and
- (D) the export express program established under section 7(a)(34).

(3) CONSISTENCY OF TRACKING.—The Associate Administrator, in coordination with the departments and agencies that are represented on the Trade Promotion Coordinating Committee established under section 2312 of the Export Enhancement Act of 1988 (15 U.S.C. 4727) and the small business development center network, shall develop a system to track exports by small business concerns, including information relating to the performance measures developed under paragraph (1), that is consistent with systems used by the departments and agencies and the network.

(k)⁸³⁴ EXPORT ASSISTANCE CENTERS.—

Export assistance centers.

(1) EXPORT FINANCE SPECIALISTS.—

(A) MINIMUM NUMBER OF EXPORT FINANCE SPECIALISTS.—On and after the date that is 90 days after the date of enactment of this subsection, the Administrator, in coordination with the Secretary of Commerce, shall ensure that the number of export finance specialists is not less than the number of such employees so assigned on January 1, 2003.

(B) EXPORT FINANCE SPECIALISTS ASSIGNED TO EACH REGION OF THE ADMINISTRATION.—On and after the date that is 2 years after the date of enactment of this subsection, the Administrator, in coordination with the Secretary of Commerce, shall ensure that there are not fewer than 3 export finance specialists in each region of the Administration.

(2) PLACEMENT OF EXPORT FINANCE SPECIALISTS.—

(A) PRIORITY.—The Administrator shall give priority, to the maximum extent practicable, to placing employees of the Administration at any Export Assistance Center that—

- (i) had an Administration employee assigned to the Export Assistance Center before January 2003; and

⁸³⁴ New subsection 22(k) added by § 1205(a) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2527).

(ii) has not had an Administration employee assigned to the Export Assistance Center during the period beginning January 2003, and ending on the date of enactment of this subsection, either through retirement or reassignment.

(B) NEEDS OF EXPORTERS.—The Administrator shall, to the maximum extent practicable, strategically assign Administration employees to Export Assistance Centers, based on the needs of exporters.

§ 22(k)(3) to
§ 22(l)(1)(A)(iii)

(C) RULE OF CONSTRUCTION.—Nothing in this subsection may be construed to require the Administrator to reassign or remove an export finance specialist who is assigned to an Export Assistance Center on the date of enactment of this subsection.

(3) GOALS.—The Associate Administrator shall work with the Department of Commerce, the Export-Import Bank of the United States, and the Overseas Private Investment Corporation to establish shared annual goals for the Export Assistance Centers.

(4) OVERSIGHT.—The Associate Administrator shall designate an individual within the Administration to oversee all activities conducted by Administration employees assigned to Export Assistance Centers.

(1) DEFINITION.—In this section—

(1) the term “Associate Administrator” means the Associate Administrator for International Trade described in subsection (a)(2); “Associate Administrator.”

(2) the term “Export Assistance Center” means a one-stop shop for United States exporters established by the United States and Foreign Commercial Service of the Department of Commerce pursuant to section 2301(b)(8) of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4721(b)(8)); “Export Assistance Center.”
[15 USC 4721(b)(8)]

(3) the term “export finance specialist” means a full-time equivalent employee of the Office assigned to an Export Assistance Center to carry out the duties described in subsection (e); and “Export finance specialist.”

(4) the term “Office” means the Office of International Trade established under subsection (a)(1). “Office.”

(1)⁸³⁵ STATE TRADE EXPANSION PROGRAM.—

(1) DEFINITIONS.—In this subsection—

⁸³⁵ Subsection 22(l) redesignated as 22(m) and new subsection 22(l) added by § 503 of P.L. 114-125, approved Feb. 24, 2016 (130 Stat. 174).

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- concern that—
- (A) the term “eligible small business concern” means a business “Eligible small business concern.”
 - (i) is organized or incorporated in the United States;
 - (ii) is operating in the United States; § 22(1)(1)(A)(iii)(I) to § 22(1)(2)(F)
 - (iii) meets—
 - (I) the applicable industry-based small business size standard established under section 3; or
 - (II) the alternate size standard applicable to the program under section 7(a) of this Act and the loan programs under title V of the Small Business Investment Act of 1958;
 - (iv) has been in business for not less than 1 year, as of the date on which assistance using a grant under this subsection commences; and
 - (v) has access to sufficient resources to bear the costs associated with trade, including the costs of packing, shipping, freight forwarding, and customs brokers;
 - (B) the term “program” means the State Trade Expansion Program established under paragraph (2); “Program.”
 - (C) the term “rural small business concern” means an eligible small business concern located in a rural area, as that term is defined in section 1393(a)(2) of the Internal Revenue Code of 1986; “Rural small business concern.”
 - (D) the term “socially and economically disadvantaged small business concern” has the meaning given that term in section 8(a)(4)(A) of the Small Business Act; and “Socially and economically disadvantaged small business concern.”
 - (E) the term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. “State.”
- (2) ESTABLISHMENT OF PROGRAM.—The Associate Administrator shall establish a trade expansion program, to be known as the “State Trade Expansion Program”, to make grants to States to carry out programs that assist eligible small business concerns in—
- (A) participation in foreign trade missions;

SMALL BUSINESS ACT

- Commerce;
- (B) a subscription to services provided by the Department of
 - (C) the payment of website fees;
 - (D) the design of marketing media;
 - (E) a trade show exhibition;
 - (F) participation in training workshops;
 - (G) a reverse trade mission;
 - (H) procurement of consultancy services (after consultation with the Department of Commerce to avoid duplication); or
 - (I) any other initiative determined appropriate by the Associate Administrator.

§ 22(1)(2)(G) to
§ 22(1)(3)(C)

(3) GRANTS.—

(A) JOINT REVIEW.—In carrying out the program, the Associate Administrator may make a grant to a State to increase the number of eligible small business concerns in the State exploring significant new trade opportunities.

(B) CONSIDERATIONS.—In making grants under this subsection, the Associate Administrator may give priority to an application by a State that proposes a program that—

- (i) focuses on eligible small business concerns as part of a trade expansion program;
- (ii) demonstrates intent to promote trade expansion by—
 - (I) socially and economically disadvantaged small business concerns;
 - (II) small business concerns owned or controlled by women; and
 - (III) rural small business concerns;
- (iii) promotes trade facilitation from a State that is not 1 of the 10 States with the highest percentage of eligible small business concerns that are engaged in international trade, based upon the most recent data from the Department of Commerce; and

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(iv) includes—

(I) activities which have resulted in the highest return on investment based on the most recent year; and

(II) the adoption of shared best practices included in the annual report of the Administration.

§ 22(1)(3)(C)(i) to
§ 22(1)(6)

(C) LIMITATIONS.—

(i) SINGLE APPLICATION.—A State may not submit more than 1 application for a grant under the program in any 1 fiscal year.

(ii) PROPORTION OF AMOUNTS.—The total value of grants made under the program during a fiscal year to the 10 States with the highest percentage of eligible small business concerns, based upon the recent data available from the Department of Commerce, shall be not more than 40 percent of the amounts appropriated for the program for that fiscal year.

(iii) DURATION.—The Associate Administrator shall award a grant under this program for a period of not more than 2 years.

(D) APPLICATION.—

(i) IN GENERAL.—A State desiring a grant under the program shall submit an application at such time, in such manner, and accompanied by such information as the Associate Administrator may establish.

(ii) CONSULTATION TO REDUCE DUPLICATION.—A State desiring a grant under the program shall—

(I) before submitting an application under clause (i), consult with applicable trade agencies of the Federal Government on the scope and mission of the activities the State proposes to carry out using the grant, to ensure proper coordination and reduce duplication in services; and

(II) document the consultation conducted under subclause (I) in the application submitted under clause (i).

(4) COMPETITIVE BASIS.—The Associate Administrator shall award grants under the program on a competitive basis.

(5) FEDERAL SHARE.—The Federal share of the cost of a trade expansion program carried out using a grant under the program shall be—

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(A) for a State that has a high trade volume, as determined by the Associate Administrator, not more than 65 percent; and

(B) for a State that does not have a high trade volume, as determined by the Associate Administrator, not more than 75 percent.

§ 22(l)(7) to
§ 22(l)(8)(A)

(6) NON-FEDERAL SHARE.—The non-Federal share of the cost of a sion program carried out using a grant under the program shall be comprised of 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

(7) REPORTS.—

(A) INITIAL REPORT.—Not later than 120 days after the date of enactment of this subsection, the Associate Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report, which shall include—

(i) a description of the structure of and procedures for the program;

(ii) a management plan for the program; and

(iii) a description of the merit-based review process to be used in the program.

(B) ANNUAL REPORTS.—

(i) IN GENERAL.—The Associate Administrator shall publish on the website of the Administration an annual report regarding the program, which shall include—

(I) the number and amount of grants made under the program during the preceding year;

(II) a list of the States receiving a grant under the program during the preceding year, including the activities being performed with each grant;

(III) the effect of each grant on the eligible small business concerns in the State receiving the grant;

(IV) the total return on investment for each State; and

(V) a description of best practices by States that showed high returns on investment and significant progress in helping more eligible small business concerns.

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(ii) NOTICE TO CONGRESS.—On the date on which the Associate Administrator publishes a report under clause (i), the Associate Administrator shall notify the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives that the report has been published.

(8) REVIEWS BY INSPECTOR GENERAL.—

(A) IN GENERAL.—The Inspector General of the Administration shall conduct a review of—

§ 22(l)(8)(A)(i) to
§ 23

(i) the extent to which recipients of grants under the program are measuring the performance of the activities being conducted and the results of the measurements; and

(ii) the overall management and effectiveness of the program.

(B) REPORTS.—

(i) PILOT PROGRAM.—Not later than 6 months after the date of enactment of this subsection, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the use of amounts made available under the State Trade and export Promotion Grant Program under section 1207 of the Small Business Jobs Act of 2010 (15 U.S.C. 649b note).

(ii) NEW STEP PROGRAM.—Not later than 18 months after the date on which the first grant is awarded under this subsection, the Inspector General of the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding the review conducted under subparagraph (A).

(9) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program \$30,000,000 for each of fiscal years 2016 through 2020.

§ 23(a) to
 § 23(d)(1)(C)

3. ⁸³⁶ SUPERVISORY AND ENFORCEMENT AUTHORITY FOR SMALL BUSINESS LENDING COMPANIES.

15 USC 650.

(a) IN GENERAL.—The Administrator is authorized—

(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this Act; and

(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 7(a) in accordance with the purposes of this Act.

(b) CAPITAL DIRECTIVE.—

Capital directive.

(1) IN GENERAL.—If the Administrator determines that a small business lending company is being operated in an imprudent manner, the Administrator may, in addition to any other action authorized by law, issue a directive to such company to increase capital to such level as the Administrator determines will result in the safe and sound operation of such company.

(2) DELEGATION.—The Administrator may not delegate the authority granted under paragraph (1) except to an Associate Deputy Administrator.

⁸³⁶Section 23 completely rewritten by § 161 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-650). Previous § 23 added by § 111A(a) of P.L. 98-473, approved Oct. 12, 1984 (98 Stat. 1956). Text of former § 23 is reprinted below:

Notwithstanding any other provision of law, rule, or regulations, for purposes of section 7(b) of this Act (15 U.S.C. 636(b)), the Administrator shall, with respect to small business concerns involved in the fishing industry, treat the recent El Nino-related ocean conditions as a disaster under such subsection:

(1) disaster loan assistance shall be provided to the fishing industry pursuant to paragraph (2) of such section—

(A) the term "recent El Nino-related ocean conditions" means the ocean conditions (including high water temperatures, scarcity of prey, and absence of normal upwellings) which occurred in the eastern Pacific Ocean off the west coast of the North American Continent during the period beginning with June 1982 and ending at the close of December 1983, and which resulted from the climatic conditions occurring in the Equatorial Pacific during 1982 and 1983;(B) the term "fishing industry" means any trade or business involved in (i) the catching, taking, or harvesting of fish (whether or not sold on a commercial basis), (ii) any operation at sea or on land, in preparation for, or substantially dependent upon, the catching, taking, or harvesting of fish, and (iii) the processing or canning of fish (including storage, refrigeration and transportation of fish before processing or canning); and

(C) the term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds; and

(2) for purposes of paragraphs (2) through (4) of subsection 7(b) of this Act, eligibility of individual applicants shall not in any way be dependent upon the number of disaster victims in any county or other political subdivision.

(3) REGULATIONS.—The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital pursuant to paragraph (1).

Regulations.

(c) CIVIL ACTION.—If a small business lending company violates this Act, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this Act.

Revocation or suspension of loan authority.

(d) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 7(a) of this Act—

(A) for false statements knowingly made in any written submission required under this Act;

(B) for omission of a material fact from any written submission required under this Act;

§ 23(d)(1)(D) to § 23(e)(2)

(C) for willful or repeated violation of this Act;

(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this Act; or

(E) for violation of any cease and desist order of the Administrator under this section.

(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f). The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f). If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service

their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge [5 USC 3105] as that term is used in section 3105 of title 5, United States Code, the authority to conduct any hearing required under subsection (f). The Administrator shall base the decision to revoke on the record of the hearing.

(e) CEASE AND DESIST ORDER.—

(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this Act or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this Act, the Administrator may order, after the opportunity for hearing pursuant to subsection (f), the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

Cease and desist order.

§ 23(e)(3) to § 23(g)(1)

(2) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f). If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f).

(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this Act.

(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d).

(f) PROCEDURE FOR REVOCATION OR SUSPENSION OF LOAN AUTHORITY AND FOR CEASE AND DESIST ORDER.—

(1) Before revoking or suspending authority under subsection (d) or issuing a cease and desist order under subsection (e), the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5, United States Code. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall

promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefore and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5, United States Code. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

(g) REMOVAL OR SUSPENSION OF MANAGEMENT OFFICIAL.—

Removal or suspension of management official.

(1) DEFINITION.—In this section, the term “management official” means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company’s or lender’s activities under section 7(a) of this Act.

§ 23(g)(2) to § 23(g)(2)(D)

(2) REMOVAL OF MANAGEMENT OFFICIAL.—

(A) NOTICE.—The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

(i) willfully and knowingly commits a substantial violation of—

(I) this Act;

(II) any regulation issued under this Act;

(III) a final cease-and-desist order under this Act; or

(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this Act; or

(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

(B) CONTENTS OF NOTICE.—A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefore and shall fix a time and

place at which a hearing, conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, will be held thereon.

(C) HEARING.—

(i) TIMING.—A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

(I) the management official, and for good cause shown; or

(II) the Attorney General.

(ii) CONSENT.—Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of

§ 23(g)(2)(D)(i) to order subparagraph (A).
§ 23(g)(3)(B)(ii)(II)

(D) ORDER OF REMOVAL.—

(i) IN GENERAL.—In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

(ii) EFFECTIVENESS.—An order under clause (i) shall—

(I) take effect 30 days after the date of service upon the subject small business lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(3) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

(A) IN GENERAL.—In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice

Authority to suspend or prohibit participation.

to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 7(a) of this Act.

- (B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A)—
- (i) shall take effect upon service of notice under paragraph (2); and
 - (ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—
 - (I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and
 - (II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

§ 23(g)(3)(C) to
§ 23(g)(6)(A)

(C) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2).

Judicial review of suspension prior to hearing.

(4) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

(A) IN GENERAL.—If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

Authority to suspend on criminal charges.

(B) EFFECTIVENESS.—A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

(C) AUTHORITY UPON CONVICTION.—If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an

order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

(D) AUTHORITY UPON DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f).

(5) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR A NON-FEDERALLY REGULATED LENDER.—Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

(6) FINAL AGENCY ACTION AND JUDICIAL REVIEW.—

Final agency action and judicial review.

§ 23(g)(6)(B) to § 23(j)(2)

(A) ISSUANCE OF ORDERS.—After a hearing under this section, and not later than 30 days after the Administrator notifies the parties that the case submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5, United States Code.

(B) JUDICIAL REVIEW.—An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

(h) APPOINTMENT OF RECEIVER.—

Appointment of receiver.

(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C) [sic], the court may take exclusive jurisdiction of a small business lending company or a non-Federally regulated lender and appoint a receiver to hold and administer the assets of the company or lender.

(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

(i) POSSESSION OF ASSETS.—

Possession of assets.

(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h).

(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in

an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h).

(j) PENALTIES AND FORFEITURES.—

Penalties and forfeitures.

(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than \$5,000 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

(2) The Administrator may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, United States Code, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administrator finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administrator may for the purposes of this section make any alternative requirements appropriate to the situation.

§ 24(a) to § 24(c)

§ 24.⁸³⁷(a) The Administrator is authorized to make grants to or to enter into contracts with any State for the purpose of contracting with small businesses to plant trees on land owned or controlled by such State or local government. The Administrator shall require as a condition of any grant (or amendment or modification thereof) under this section that the applicant also contribute to the project a sum equal to at least 25 per centum of a particular project cost from sources other than the Federal Government. Such non-Federal money may include in-kind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land on which the trees are to be planted, nor may any part of any grant be used to pay for land or land charges: Provided, That not less than one-half of the amounts appropriated under this section shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the population in each area as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate or the decennial census, whichever is most current. The Administrator may give a priority in awarding the remaining one-half of appropriated amounts to applicants who agree to contribute more than the requisite 25 per centum, and shall give priority to a proposal to restore an area determined to be a major

Tree Planting.
15 USC 651.

⁸³⁷Section 24 added by § 4 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2140).

disaster by the President on a date not more than three years prior to the fiscal year for which the application is made⁸³⁸.

(b) In order to accomplish the objectives of this section, the Administrator, in consultation with appropriate Federal agencies, shall be responsible for formulating a national small business tree planting program. Based on this program, a State may submit a detailed proposal for tree planting by contract.

§ 24(d) to § 25(b)(1)(A) (c) To encourage and develop the capacity of small business concerns, to utilize this important segment of our economy, and to permit rapid increases in employment opportunities in local communities, grantees are directed to utilize small business contractors firms in connection with the program established by this section, and shall, to the extent practicable, divide the project to allow more than one small business concern to perform the work under the project.

(d) For purposes of this section, agencies of the Federal Government are hereby authorized to cooperate with all grantees and with State foresters or other appropriate officials by providing without charge, in furtherance of this program, technical services with respect to the planting and growing of such trees.

(e) There are authorized to be appropriated to carry out the objectives of this section, \$15,000,000 for fiscal year 1991 and \$30,000,000 for each of the fiscal years 1992 through 1994, and all of such sums may remain available until expended. Authorization.

(f) Notwithstanding any other law, rule, or regulation, the administration shall publish in the Federal Register proposed rules and regulations implementing this section within sixty days after the date of enactment of this section and shall publish final rules and regulations within one hundred and twenty days of the date of enactment of this section.

(g) As used in this section:

(1) the term “local government” includes political subdivisions of a State such as counties, parishes, cities, towns and municipalities; “Local government.”

(2) the term “planting” includes watering, application of fertilizer and herbicides, pruning and shaping, and other subsequent care and maintenance for a period of three years after the trees are planted; and “Planting.”

(3) the term “State” includes any agency thereof. “State”.

(h) The Administrator shall submit annually to the President and the Congress a report on activities within the scope of this section.

⁸³⁸The clause following the comma was added by § 201 of P.L. 103-211, approved Feb 12, 1994 (108 Stat. 3). Section 202 of P.L. 103-211 provides:

Of the \$258,900,000 made available under the heading “Small Business Administration, Salaries and Expenses” in Public Law 103-121, the \$18,000,000 included in that total amount and designated under such heading to carry out section 24 of the Small Business Act, as amended, shall remain available until September 30, 1995.

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§ 25.⁸³⁹ (a) There is hereby established a Central European Small Business Enterprise Development Commission (hereinafter in this section referred to as the “Commission”). The Commission shall be comprised of a representative of each of the following: the Small Business Administration, the Association of American Universities, and the Association of Small Business Development Centers.

Central European Enterprise Development.
15 USC 652.

(b) The Commission shall develop in Czechoslovakia, Poland and Hungary (hereinafter referred to as “designated Central European countries”) a self-sustaining system to provide management and technical assistance to small business owners.

“Designated Central European countries.”

(1) Not later than 90 days after the effective date of this section, the Commission, in consultation with the Agency for International Development, shall enter a contract with one or more entities to—

§ 25(b)(1)(B) to § 25(h)

(A) determine the needs of small businesses in the designated Central European countries for management and technical assistance;

(B) evaluate appropriate Small Business Development Center-programs [sic] which might be replicated in order to meet the needs of each of such countries; and

(C) identify and assess the capability of educational institutions in each such country to develop a Small Business Development Center type program.

(2) Not later than 18 months after the effective date of this section, the Commission shall review the recommendations submitted to it and shall formulate and contract for the establishment of a three-year management and technical assistance demonstration program.

(c) In order to be eligible to participate, the educational institution in each designated Central European country shall—

(1) obtain the prior approval of the government to conduct the program;

(2) agree to provide partial financial support for the program, either directly or indirectly, during the second and third years of the demonstration program; and

(3) agree to obtain private sector involvement in the delivery of assistance under the program.

(d) The Commission shall meet and organize not later than 30 days after the date of enactment of this section.

(e) Members of the Commission shall serve without pay, except they shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by

Commission, members.

[5 USC 5703].

⁸³⁹Section 25 added by § 7 of P.L. 101-515, approved Nov. 5, 1990 (104 Stat. 2142).

SMALL BUSINESS ACT

them in carrying out their functions in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5, United States Code.

(f) Two Commissioners shall constitute a quorum for the transaction of business. Meetings shall be at the call of the Chairperson who shall be elected by the Members of the Commission.

(g) The Commission shall not have any authority to appoint staff, but upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist in carrying out the Commission's functions under this section without regard to section 3341 of title 5 of the United States Code. The Administrator of the General Services Administration shall provide, on a reimbursable basis, such administrative support services as the Commission may request. [5 USC 3341].

§ 25(i) to § 27

(h) The Commission shall report to Congress not later than December 1, 1991, and annually thereafter, on the progress in carrying out the provisions of this section.

(i) There are hereby authorized to be appropriated to the Small Business Administration the sum of \$3,000,000 for fiscal year 1991, \$5,000,000 for fiscal year 1992, \$2,000,000 for each of fiscal years 1993 and 1994, and \$1,000,000 for fiscal year 1995⁸⁴⁰ to carry out the provisions of this section. Such sums shall be disbursed by the Small Business Administration as requested by the Commission and may remain available until expended. Any authority to enter contracts or other spending authority provided for in this section is subject to amounts provided for in advance in appropriations Acts. Authorization.

§ 26.⁸⁴¹(a) There is hereby established in the Small Business Administration an Office of Rural Affairs (hereafter in this section referred to as the "Office"). Office of Rural Affairs. 15 USC 653.

(b) The Office shall be headed by a director who shall be appointed by the Administrator not later than 90 days after the date of the enactment of this section.

(c) The Office shall— Functions.

(1) strive to achieve an equitable distribution of the financial assistance available from the Administration for small business concerns located in rural areas;

(2) to the extent practicable, compile annual statistics on rural areas, including statistics concerning the population, poverty, job creation and retention, unemployment, business failures, and business startups;

⁸⁴⁰Authorization for FY 1995 added by § 405 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4192). Authorization changed from \$8,000,000 for FY 1993 to \$2,000,000 for each FY 1993 and 1994 by § 9(b) of P.L. 103-81, approved August 13, 1993 (107 Stat. 783).

⁸⁴¹Section 26 added by § 302 of P.L. 101-574, approved Nov. 15, 1990 (104 Stat. 2827).

(3) provide information to industries, organizations, and State and local governments concerning the assistance available to rural small business concerns through the Administration and through other Federal departments and agencies;

(4) provide information to industries, organizations, educational institutions, and State and local governments concerning programs administered by private organizations, educational institutions, and Federal, State, and local governments which improve the economic opportunities of rural citizens; and

(5) work with the United States Tourism and Travel Administration to assist small businesses in rural areas with tourism promotion and development.

§ 27(a) to
§ 27(a)(2)(C)

§ 27.⁸⁴² PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM.

Drug-Free
Workplace.
15 USC 654.

(a) DEFINITIONS.—In this section:

(1) DRUG-FREE WORKPLACE PROGRAM.—The term “drug-free workplace program” means a program that includes—

“Drug-free
workplace
program.”

(A) a written policy, including a clear statement of expectations for workplace behavior, prohibitions against reporting to work or working under the influence of illegal drugs or alcohol, prohibitions against the use or possession of illegal drugs in the workplace, and the consequences of violating those expectations and prohibitions;

(B) drug and alcohol abuse prevention training for a total of not less than 2 hours for each employee, and additional voluntary drug and alcohol abuse prevention training for employees who are parents;

(C) employee illegal drug testing, with analysis conducted by a drug testing laboratory certified by the Substance Abuse and Mental Health Services Administration, or approved by the College of American Pathologists for forensic drug testing, and a review of each positive test result by a medical review officer;

⁸⁴²Section 27 completely rewritten by § 904 of P.L. 105-277, approved Oct. 21, 1998 (112 Stat. 2681-811). For Congressional findings and purposes, see page 1115 of this Handbook. The title of this section was changed from “Drug-Free Workplace Demonstration Program” by § 503(a)(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Text of former § 27, added by § 310 of P.L. 101-574, is reprinted below:

(a) The Administration is authorized to make grants to conduct demonstration programs in 5 States in order to promote tourism activities delivered by small businesses. The purpose of the program shall be to demonstrate ways in which the economy in rural areas may be improved by encouraging tourism and its resulting increase in income and employment in rural areas. The Administration shall require as a condition of any grant under this section that the applicant also contribute to the demonstration program a sum equal to at least 25 percent of the amount of the funding requested from the Federal Government.

(b) There are authorized to be appropriated to carry out the provision of this section, \$1,000,000 for fiscal year 1992 and such sums may remain available until expended.

(c) Not later than February 1, 1993, the Administration shall submit to the President and the Congress a report on activities undertaken pursuant to this section.

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(D) employee access to an employee assistance program, including confidential assessment, referral, and short-term problem resolution; and

(E) continuing alcohol and drug abuse prevention education.

(2) ELIGIBLE INTERMEDIARY.—The term “eligible intermediary” means an organization— “Eligible intermediary.”

(A) that has not less than 2 years of experience in carrying out drug-free workplace programs;

(B) that has a drug-free workplace policy in effect;

§ 27(a)(2)(D)(i) to
§ 27(b)(1)

(C) that is located in a State, the District of Columbia, or a territory of the United States; and

(D) (i) the purpose of which is—

(I) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

(II) to provide other forms of assistance and services to small business concerns; or

(ii)⁸⁴³ that is eligible to receive a grant under chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.). [21 USC 1521].

(3) EMPLOYEE.—The term “employee” includes any— “Employee.”

(A) applicant for employment;

(B) employee;

(C) supervisor;

(D) manager;

(E) officer of a small business concern who is active in management of the concern; and

(F) owner of a small business concern who is active in management of the concern.

⁸⁴³ Subparagraph 27(a)(2)(D) reorganized and new clause (ii) added by § 125 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-642).

(4) MEDICAL REVIEW OFFICER.—The term “medical review officer”— “Medical review officer”

(A) means a licensed physician with knowledge of substance abuse disorders; and

(B) does not include any—

(i) employee of the small business concern; or

(ii) employee or agent of, or any person having a financial interest in, the laboratory for which the illegal drug test results are being reviewed.

(b) ESTABLISHMENT.—

§ 27(b)(2) to § 27(c)(2)

(1) IN GENERAL.—There is established a drug-free workplace demonstration program, under which the Administrator may make grants to, or enter into cooperative agreements or contracts with, eligible intermediaries for the purpose of providing financial and technical assistance to small business concerns seeking to establish a drug-free workplace program.

(2)⁸⁴⁴ ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.—In addition to grants under paragraph (1), the Administrator may make grants to, or enter into cooperative agreements or contracts with, any grantee for the purpose of providing, in cooperation with one or more small business development centers, technical assistance to small business concerns seeking to establish a drug-free workplace program.

(3)⁸⁴⁵ 2-YEAR GRANTS.—Each grant made under this subsection shall be for a period of 2 years, subject to an annual performance review by the Administrator.

⁸⁴⁴ New paragraph 27(b)(2) added by § 124(a)(2) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-642).

⁸⁴⁵ New paragraph 27(b)(3) added by § 124(b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-642).

(c)⁸⁴⁶ PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTERMEDIARIES.—

§ 27(c)(2)(A) to § 27(g) (1) TECHNICAL ASSISTANCE AND INFORMATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and information to each eligible intermediary receiving a grant under subsection (b) regarding the most effective practices in establishing and carrying out drug-free workplace programs.

(2) EVALUATION OF PROGRAM.—

(A) DATA COLLECTION AND ANALYSIS.—Each eligible intermediary receiving a grant under this section shall establish a system to collect and analyze information regarding the effectiveness of drug-free workplace programs established with assistance provided under this section through the intermediary, including information regarding any increase or decrease among employees in drug use, awareness of the adverse consequences of drug use, and absenteeism, injury, and disciplinary problems related to drug use. Such system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe. Not more than 5 percent of the amount of each grant made under subsection (b) shall be used by the eligible intermediary to carry out this paragraph.

(B) METHOD OF EVALUATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and guidance to each eligible intermediary receiving a grant under subsection (b) regarding the collection and analysis of information to evaluate the effectiveness of drug-free workplace programs established with assistance provided under this section, including the information referred to in paragraph (1). Such assistance shall

⁸⁴⁶ Subsection 27(c) rewritten by § 126 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-643). Text of former subsection 27(c) is reprinted below:

PRIVACY PROTECTION FOR EMPLOYEES PARTICIPATING IN A DRUG-FREE WORKPLACE PROGRAM.—Each drug-free workplace program established with assistance made available under this section shall—

- (1) include, as reasonably necessary and appropriate, practices and procedures to ensure the confidentiality of illegal drug test results and of any participation by an employee in a rehabilitation program;
- (2) prohibit the mandatory disclosure of medical information by an employee prior to a confirmed positive illegal drug test; and
- (3) require that a medical review officer reviewing illegal drug test results shall report only the final results, limited to those drugs for which the employee tests positive, in writing and in a manner designed to ensure the confidentiality of the results.

Section 127 of P.L. 108-447 provides:

REPORT TO CONGRESS.—Not later than March 31, 2006, the Administrator, in consultation with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall submit to Congress a report that—

- (1) analyzes the information collected under section 27(c) of the Small Business Act;
- (2) identifies trends in such information; and
- (3) evaluates the effectiveness of the drug-free workplace programs established with assistance under section 27 of the Small Business Act (15 U.S.C. 654).

include the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the concern's employees and the identification of methods suitable for analyzing such information.

(d) EVALUATION AND COORDINATION. Not later than 18 months after the date of enactment of the Drug-Free Workplace Act of 1998, the Administrator, in coordination with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall—

(1) evaluate the drug-free workplace programs established with assistance made available under this section; and

(2) submit to Congress a report describing the results of the evaluation under paragraph (1).

(e) CONTRACT AUTHORITY.—In carrying out this section, the Administrator may—

Contract authority.

(1) contract with public and private entities to provide assistance related to carrying out the program under this section; and

(2) compensate those entities for provision of that assistance.

(f) CONSTRUCTION.—Nothing in this section may be construed to require an employer who attends a program offered by an intermediary to contract for any service offered by the intermediary.

§ 27(g)(1) to § 28(b)

(g) AUTHORIZATION.—

Authorization of appropriations.

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, (other than subsection (b)(2)), \$5,000,000 for each of fiscal years 2005 and 2006.⁸⁴⁷ Amounts made available under this paragraph shall remain available until expended.

(2) SMALL BUSINESS DEVELOPMENT CENTERS.—Of the total amount made available under paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or \$500,000⁸⁴⁸ may be used to carry out section 21(c)(3)(T).

⁸⁴⁷ Paragraph 27(g)(1) rewritten by § 123(a) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-641). Text of former paragraph 27(g)(1) is reprinted below:

IN GENERAL.—There is authorized to be appropriated to carry out this section, \$5,000,000 for each of fiscal years 2001 through 2003. Amounts made available under this subsection shall remain available until expended.

Authorization amount changed from “\$10,000,000 for fiscal years 1999 and 2000” by § 503(a)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

⁸⁴⁸ Language beginning with “paragraph (1)” through “\$500,000” added by § 123(b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-642). Former language read: “this subsection, not more than the greater of 10 percent or \$1,000,000.”

(3)⁸⁴⁹ **ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.**—There are authorized to be appropriated to carry out subsection (b)(2), \$1,500,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(4)⁸⁵⁰ **LIMITATION ON ADMINISTRATIVE COSTS.**—Not more than 5 percent of the total amount made available under this subsection for any fiscal year shall be used for administrative costs (determined without regard to the administrative costs of eligible intermediaries).

§ 28.⁸⁵¹ **PILOT TECHNOLOGY ACCESS PROGRAM.**

Technology
Access
Program.
15 USC 655.

(a) The Administration, in consultation with the National Institute of Standards and Technology and the National Technical Information Service, shall establish a Pilot Technology Access Program, for making awards under this section to Small Business Development Centers (hereinafter in this section referred to as “Centers”).

§ 28(b)(1) to
§ 28(g)

(b) The Administrator of the Small Business Administration shall establish competitive, merit-based criteria for the selection of Centers to receive awards on the basis of

(1) the ability of the applicant to carry out the purposes described in subsection (d) in a manner relevant to the needs of industries in the area served by the Center;

(2) the ability of the applicant to integrate the implementation of this program with existing Federal and State technical and business assistance resources; and

(3) the ability of the applicant to continue providing technology access after the termination of this pilot program.

(c) To be eligible to receive an award under this section, an applicant shall provide a matching contribution at least equal to that received under such award, not more than 50 percent of which may be waived overhead or in-kind contributions.

(d) Awards made under this section shall be for the purpose of increasing access by small businesses to on-line data base services that provide technical and business information, and access to technical experts, in a wide range of technologies, through such activities as—

⁸⁴⁹ New paragraph 27(g)(3) added by § 123(c) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-642).

⁸⁵⁰ New paragraph 27(g)(4) added by § 123(d) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-642).

⁸⁵¹Section 28, the Pilot Technology Access Program, added by § 609(d) of P.L. 102-140, approved Oct. 28, 1991 (105 Stat. 825). A second § 28, Women's Demonstration Projects, was added by § 2 of P.L. 102-191, approved Dec. 5, 1991 (105 Stat. 1589); the second § 28 was renumbered as § 29 by § 411 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4192).

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- (1) defraying the cost of access by small businesses to the data base services;
- (2) training small businesses in the use of the data base services; and
- (3) establishing a public point of access to the data base services.

Activities described in paragraphs (1) through (3) may be carried out through contract with a private entity.

(e) Awards previously made under section 21A of this Act may be renewed under this section.

(f) Two years after the date on which the first award was issued under section 21A of this Act, the Government Accountability Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science, and Transportation of the Senate, an interim report on the implementation of the program under such section and this section, including the judgments of the participating Centers as to its effect on small business productivity and innovation.

GAO report.

(g) Three years after such date, the Government Accountability Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science and Transportation of the Senate, a final report evaluating the effectiveness of the Program under section 21A and this section in improving small business productivity and innovation.

§ 28(h) to § 29

(h) There are authorized to be appropriated to the Small Business Administration \$5 million for each of fiscal years 1992 through 1995 to carry out this section, and such amounts may remain available until expended.

Authorization of appropriations.

(i) Centers are encouraged to seek funding from Federal and non-Federal sources other than those provided for in this section to assist small businesses in the identification of appropriate technologies to fill their needs, the transfer of technologies from Federal laboratories, public and private universities, and other public and private institutions, the analysis of commercial opportunities represented by such technologies, and such other functions as the development business Planning, market research, and financial packaging required for commercialization. Insofar as such Centers pursue these activities, Federal agencies are encouraged to employ these Centers to interface with small businesses for such purposes as facilitating small business participation in Federal procurement and fostering commercialization of Federally-funded research and development.

§ 29(a) to § 29(b)

§ 29⁸⁵² WOMEN'S BUSINESS CENTER PROGRAM.

(a) DEFINITIONS - In this section—

Women's Business Center Program.
15 USC 656.

⁸⁵² This section, added by § 2 of P.L. 102-191, approved Dec. 5, 1991 (105 Stat. 1589), was renumbered as § 29 by § 411 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4192). Section 29 was completely rewritten by § 308(a) of P.L. 105-135, approved

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- (1) the term “Assistant Administrator” means the Assistant Administrator of the Office of Women’s Business Ownership established under subsection (g); “Assistant Administrator.”
- (2)⁸⁵³ the term “private nonprofit organization” means an entity that is described in section 501(c) of the Internal Revenue Code of 1986 and exempt from taxation under section 501(a) of such Code; “Private nonprofit organization.”
- (3) the term “small business concern owned and controlled by women,” either startup or existing, includes any small business concern— “Small business concern owned and controlled by women.”

Dec. 2, 1997 (111 Stat. 2611). Section 308(b) of the same law provides:

(b) APPLICABILITY—

(1) IN GENERAL.—Subject to paragraph (2), any organization conducting a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656)(as in effect on the day before the effective date of this Act) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, the organization shall receive financial assistance in accordance with section 29(c) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women’s Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656)(as amended by this section).

(2) TERMS OF ASSISTANCE FOR CERTAIN ORGANIZATIONS.—Any organization operating in the third year of a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656)(as in effect on the day before the effective date of this Act) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, during the fourth and fifth years of the project, the organization shall receive financial assistance in accordance with section 29(c)(1)(C) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women’s Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656)(as amended by this section).

The text of former § 29 is reprinted below:

WOMEN'S DEMONSTRATION PROJECTS.--(a) The Administration may provide financial assistance to private organizations to conduct 3-year demonstration projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

(b) (1) As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

(A) If the project first receives its Federal financial assistance prior to fiscal year 1993, an annual amount that is not less than the amount of the Federal financial assistance provided each year.

(B) If the project first receives Federal financial assistance in fiscal year 1993, or thereafter, annual amounts equal to—

(i) in the first year, 1 non-Federal dollar for each 2 Federal dollars;

(ii) in the second year, 1 non-Federal dollar for each Federal dollar; and

(iii) in the third and final year, 2 non-Federal dollars for each Federal dollar.

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and (A) that is not less than 51 percent owned by 1 or more women;

(B) the management and daily business operations of which are controlled by 1 or more women; and

(4) the term "women's business center site" means the location of—

"Women's
business
center site."

(A) a women's business center; or

(2) Up to one-half of the non-Federal matching assistance may be in the form of in-kind contributions which are budget line items only, including but not limited to office equipment and office space.

(3) The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal matching funds are obtained.

(4) If any recipient of assistance under this section fails to obtain the required non-Federal contribution during any year of any project, it shall not be eligible thereafter for advance disbursements under paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded. In addition, prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

(c) Each applicant for assistance under this section initially shall submit a 3-year plan on proposed fundraising and training activities, and may receive financial assistance under this section for a maximum of 3 years per site. The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include—

(1) the experience of the applicant in conducting programs or on-going efforts designed to impart or upgrade the business skills of women business owners or potential owners;

(2) the present ability of the applicant to commence a demonstration project within a minimum amount of time; and

(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged.

(d) For purposes of this section, the term "small business concern" means a small business concern, either start-up or existing, owned and controlled by women, and—

(1) which is at least 51 percent owned by 1 or more women; and

(2) the management and daily business operations of which are controlled by 1 or more women.

(e) There are authorized to be appropriated \$4,000,000 for each fiscal year to carry out the demonstration projects authorized by this section. Notwithstanding any other provision of law, the Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this section, except that it shall ensure that all eligible sources are provided a reasonable opportunity to submit proposals.

(f) The Administration shall prepare and transmit an annual report, beginning February 1, 1992, to the Committees on Small Business of the Senate and House of Representatives on the effectiveness of all demonstration projects conducted under the authority of this section. Such report shall provide information concerning—

(1) the number of individuals receiving assistance;

(2) the number of start-up business concerns formed;

(3) the gross receipts of assisted concerns;

(4) increases or decreases in profits of assisted concerns; and

(5) the employment increases or decreases of assisted concerns.

(g) The Administration shall not provide financial assistance under this section to any new project after October 1, 1997, except that it may fund projects which commenced prior thereto.

(h) OFFICE OF WOMEN'S BUSINESS OWNERSHIP.—There is hereby established with the Administration an

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(B) 1 or more women’s business centers, established in conjunction with another women’s business center in another location within a State or region—

(i) that reach a distinct population that would otherwise not be served;

(ii) whose services are targeted to women; and

(iii) whose scope, function, and activities are similar to those of the primary women’s business center or centers in conjunction with which it was established.

§ 29(b)(1) to
§ 29(c)(3)

(b) AUTHORITY.—The Administration may provide financial assistance to private nonprofit⁸⁵⁴ organizations to conduct 5-year projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

Authority.

(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and managing cash flow and other financial operations of a business concern;

(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

(3) marketing assistance, including training and counseling in identifying and segmenting domestic and international market opportunities, preparing and executing marketing Plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

(c) CONDITIONS OF PARTICIPATION—

Conditions of participation.

(1) NON-FEDERAL CONTRIBUTIONS.—As a condition of receiving financial assistance authorized by this section, the recipient organization shall agree to obtain, after its application has been approved and notice of award has been issue, cash contributions from non-Federal sources as follows:

(A) in the first and second years, 1 non-Federal dollar for each 2 Federal dollars; and

Office of Women's Business Ownership, which shall be responsible for the administration of the Administration's programs for the development of women's business enterprises, as such term is defined in section 408 of the Women's Business Ownership Act of 1988. The Office of Women's Business Ownership shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

⁸⁵³ Paragraphs (2) and (3) renumbered as (3) and (4), respectively, and new paragraph (2) added by § 2(1) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1795).

⁸⁵⁴ “Nonprofit” added by § 2(2) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1795).

(B)⁸⁵⁵ in the third, fourth, and fifth years, 1 non-Federal dollar for each Federal dollar.

(2) **FORM OF NON-FEDERAL CONTRIBUTIONS.**—Not more than one-half of the non-Federal sector matching assistance may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(3) **FORM OF FEDERAL CONTRIBUTIONS.**—The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration may disburse up to 25 percent of each year’s Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal sector matching funds are obtained. § 29(c)(4) to § 29(f)

(4) **FAILURE TO OBTAIN NON-FEDERAL FUNDING.**—If any recipient of assistance fails to obtain the required non-Federal contribution during any project, it shall not be eligible thereafter for advance disbursements pursuant to paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded by the Administration, and prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

(5)⁸⁵⁶ Repealed.

⁸⁵⁵Subparagraphs 29(c)(1)(B) and (C) were deleted and a new subpar. (B) was added by § 2(a) of P.L. 106-17, approved April 6, 1999 (113 Stat. 27). Text of former subparagraphs 29(c)(1)(B) and (C) are reprinted below:

- (B) in the third and fourth years, 1 non-Federal dollar for each Federal dollar; and
- (C) in the fifth year, 2 non-Federal dollars for each Federal dollar.

Section 2(b) of P.L. 106-17 provides:

- (b) **APPLICABILITY**—The amendments made by this section shall apply beginning October 1, 1998.

⁸⁵⁶ New paragraph 29(c)(5) added by § 1401(b)(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2549). § 1401(c) of P.L. 111-240 provided for a repeal effective October 1, 2012. Text of former paragraph 29(c)(5) is reprinted below:

(5) **WAIVER ON NON-FEDERAL SHARE RELATING TO TECHNICAL ASSISTANCE AND COUNSELING.**—

(A) **IN GENERAL.**—Upon request by a recipient organization, and in accordance with this paragraph, the Administrator may waive, in whole or in part, the requirement to obtain non-Federal funds under this subsection for the technical assistance and counseling activities of the recipient organization carried out using financial assistance under this section for a fiscal year. The Administrator may waive the requirement to obtain non-Federal funds under this paragraph for successive fiscal years.

(B) **CONSIDERATIONS.**—In determining whether to waive the requirement to obtain non-Federal funds under this paragraph, the Administrator shall consider—

- (i) the economic conditions affecting the recipient organization;
- (ii) the impact a waiver under this clause would have on the credibility of the women’s business center program under this section;

(d) **CONTRACT AUTHORITY.**—A women’s business center may enter into a contract with a Federal department or agency to provide specific assistance to women and other underserved small business concerns. Performance of such contract should not hinder the women's business centers in carrying out the terms of the grant received by the women's business centers from the Administration.

(e) **SUBMISSION OF 5-YEAR PLAN.**—Each applicant organization initially shall submit a 5-year Plan to the Administration on proposed fundraising and training activities, and a recipient organization may receive financial assistance under this program for a maximum of 5 years per women's business center site.

§ 29(f)(1) to
§ 29(g)(2)(B)(i)(III)

CRITERIA.—The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. The criteria shall include—

(1) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of women business owners or potential owners;

(2) the present ability of the applicant to commence a project within a minimum amount of time;

(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged; and

(4) the location for the women's business center site proposed by the applicant.

(g) **OFFICE OF WOMEN’S BUSINESS OWNERSHIP—**

Office of
Women’s
Business
Ownership.

(1) **ESTABLISHMENT.**—There is established within the Administration an Office of Women’s Business Ownership, which shall be responsible for the administration of the Administration’s programs for the development of women's business enterprises (as defined in section 408 of the Women’s Business Ownership Act of 1988 (15 U.S.C. 631

Assistant
Administrator.

(iii) the demonstrated ability of the recipient organization to raise non-Federal funds; and
(iv) the performance of the recipient organization.

(C) **LIMITATIONS.**—

(i) **IN GENERAL.**—The Administrator may not waive the requirement to obtain non-Federal funds under this paragraph if granting the waiver would undermine the credibility of the women’s business center program under this section.

(ii) **SUNSET.**—The Administrator may not waive the requirement to obtain non-Federal funds under this paragraph for fiscal year 2013 or any fiscal year thereafter.

note)). The Office of Women’s Business Ownership shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

(2) ASSISTANT ADMINISTRATOR OF THE OFFICE OF WOMEN’S BUSINESS OWNERSHIP—

(A) QUALIFICATIONS.—The position of Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5, United States Code. The Assistant Administrator shall serve as a noncareer appointee (as defined in section 3132(a)(7) of that title).

(B) RESPONSIBILITIES AND DUTIES—

(i) RESPONSIBILITIES.—The responsibilities of the Assistant Administrator shall be to administer the programs and services of the Office of Women’s Business Ownership established to assist women entrepreneurs in the areas of—

- (I) starting and operating a small business;
- (II) development of management and technical skills; § 29(g)(2)(B)(i)(IV) to § 29(h)
- (III) seeking Federal procurement opportunities; and
- (IV) increasing the opportunity for access to capital.

(ii) DUTIES.—The Assistant Administrator shall—

- (I) administer and manage the Women's Business Center program;
- (II) recommend the annual administrative and program budgets for the Office of Women’s Business Ownership (including the budget for the Women's Business Center program);
- (III) establish appropriate funding levels therefore;
- (IV) review the annual budgets submitted by each applicant for the Women's Business Center program;
- (V) select applicants to participate in the program under this section
- (VI) implement this section;

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(VII) maintain a clearinghouse to provide for the dissemination and exchange of information between women's business centers;

(VIII) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;

(IX) serve as liaison for the National Women's Business Council; and

(X) advise the Administrator on appointments to the Women's Business Council.

(C) CONSULTATION REQUIREMENTS - In carrying out the responsibilities and duties described in this paragraph, the Assistant Administrator shall confer with and seek the advice of the Administration officials in areas served by the women's business centers.

§ 29(h)(1) to
§ 29(i)

(h)⁸⁵⁷ PROGRAM EXAMINATION.—

Program
examination.

(1) IN GENERAL.—The Administration shall—

(A) develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section, pursuant to which each such center shall provide to the Administration—

(i) an itemized cost breakdown of actual expenditures for costs incurred during the preceding year; and

(ii) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the center during the preceding year in order to meet the requirements of subsection (c) and, with respect to any in-kind contributions described in subsection (c)(2) that were used to satisfy the requirements of subsection (c), verification of the existence and valuation of those contributions; and

(B) analyze the results of each such examination and, based on that analysis, make a determination regarding the programmatic and financial viability of each women's business center.

⁸⁵⁷ Subsection 29(h) completely rewritten by § 3(1) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1795). Effective date of the change is Oct. 1, 1999, per § 6 of P.L. 106-165. Text of former subsection 29(h) is reprinted below:

PROGRAM EXAMINATION—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Small Business Reauthorization Act of 1997, the Administrator shall develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section.

(2) EXTENSION OF CONTRACTS.—In extending or renewing a contract with a women's business center, the Administrator shall consider the results of the examination conducted under paragraph (1).

(2) **CONDITIONS FOR CONTINUED FUNDING.**—In determining whether to award a contract (as a sustainability grant) under subsection (l) or to renew a contract (either as a grant or cooperative agreement) under this section with a women’s business center, the Administration—

Conditions for continued funding.

(A) shall consider the results of the most recent examination of the center under paragraph (1); and

(B) may withhold such award or renewal, if the Administration determines that—

(i) the center has failed to provide any information required to be provided under clause (i) or (ii) of paragraph (1)(A), or the information provided by the center is inadequate; or

(ii) the center has failed to provide any information required to be provided by the center for purposes of the report of the Administration under subsection (j), or the information provided by the center is inadequate.

(i) **CONTRACT AUTHORITY.**—The authority of the Administrator to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the Administrator has entered into a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administrator provides the applicant with written notification setting forth the reasons therefore and affords the applicant an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5, United States Code.

§ 29(j) to § 29(k)(1)

(j)⁸⁵⁸ **MANAGEMENT REPORT.**—

(1) **IN GENERAL.**—The Administration shall prepare and submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of all projects conducted under this section.

Report to Congress.

⁸⁵⁸ Subsection (j) completely rewritten by § 3(2) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1796). The change is effective Oct. 1, 1999, per § 6 of P.L. 106-165. Text of former subsection (j) is reprinted below:

REPORT.—The Administrator shall prepare and submit an annual report to the Committees on Small Business of the House of Representatives and the Senate on the effectiveness of all projects conducted under the authority of this section. Such report shall provide information concerning—

- (1) the number of individuals receiving assistance;
- (2) the number of startup business concerns formed;
- (3) the gross receipts of assisted concerns;
- (4) increases or decreases in profits of assisted concerns; and
- (5) the employment increases or decreases of assisted concerns.

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(2) CONTENTS.—Each report submitted under paragraph (1) shall include information concerning, with respect to each women’s business center established pursuant to this section—

- (A) the number of individuals receiving assistance;
- (B) the number of startup business concerns formed;
- (C) the gross receipts of assisted concerns;
- (D) the employment increases or decreases of assisted concerns;
- (E) to the maximum extent practicable, increases or decreases in profits of assisted concerns; and
- (F) the most recent analysis, as required under subsection (h)(1)(B), and the subsequent determination made by the Administration under that subsection.

§ 29(k)(1)(A) to § 29(k)(4)

(k) AUTHORIZATION OF APPROPRIATIONS—

Authorization of appropriations.

(1)⁸⁵⁹ IN GENERAL.—There is authorized to be appropriated, to remain available until the expiration of the pilot program under subsection (l)—

- (A) \$12,000,000 for fiscal year 2000;
- (B) \$12,800,000 for fiscal year 2001;
- (C) \$13,700,000 for fiscal year 2002; and
- (D) \$14,500,000 for fiscal year 2003.

(2) USE OF AMOUNTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), amounts made available under this subsection for fiscal year 1999, and each fiscal year thereafter, may only be used for grant awards and may not be used for costs incurred by the Administration in connection with the management and administration of the program under this section.

⁸⁵⁹Paragraph 29(k)(1) was rewritten by § 4(b)(1) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1799). Section 6 of P.L. 106-165 provides that the effective date of the law is Oct. 1, 1999. Text of former paragraph 29(k)(1) is reprinted below:

There is authorized to be appropriated \$11,000,000* for each fiscal year to carry out the projects authorized under this section, of which, for fiscal year 1998, not more than 5 percent may be used for administrative expenses related to the program under this section.

*Amount changed from \$8,000,000 by § 3 of P.L. 106-17, approved April 6, 1999 (113 Stat. 27).

(B)⁸⁶⁰ EXCEPTIONS.—Of the amount made available under this subsection for a fiscal year, the following amounts shall be available for selection panel costs, post-award conference costs, and costs related to monitoring and oversight:

- (i) For fiscal year 2000, 2 percent.
- (ii) For fiscal year 2001, 1.9 percent.
- (iii) For fiscal year 2002, 1.9 percent.
- (iv) For fiscal year 2003, 1.6 percent.

(3) EXPEDITED ACQUISITION.—Notwithstanding any other provision of law, the Administrator, acting through the Assistant Administrator, may use such expedited acquisition methods as the Administrator determines to be appropriate to carry out this section, except that the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit proposals.

§ 29(k)(4)(A) to
§ 29(k)(4)(B)

(4)⁸⁶¹ RESERVATION OF FUNDS FOR SUSTAINABILITY PILOT PROGRAM.—

(A) IN GENERAL.—Subject to subparagraph (B), of the total amount made available under this subsection for a fiscal year, the following amounts shall be reserved for sustainability grants under subsection (1):

- (i) For fiscal year 2000, 17 percent.
- (ii) For fiscal year 2001, 18.8 percent.
- (iii) For fiscal year 2002, 30.2 percent.
- (iv) For fiscal year 2003, 30.2 percent.

(B) USE OF UNAWARDED FUNDS FOR SUSTAINABILITY PILOT PROGRAM GRANTS.—If the amount reserved under subparagraph (A) for any fiscal year is not fully awarded to private nonprofit organizations described in subsection (1)(B), the Administration is authorized to use the unawarded amount to fund additional women’s business center sites or to increase funding of existing women’s business center sites under subsection (b).

⁸⁶⁰ New subparagraph 29(k)(2)(B) added by § 4(b)(2)(B) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1799).

⁸⁶¹ New paragraph 29(k)(4) added by § 4(b)(3) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1799). The Consolidated Appropriations Act for 2005, P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-103) provides:

That, of the amounts provided for Women’s Business Centers, not less than 48 percent shall be available to continue Women’s Business Centers in sustainability status.

- (l)⁸⁶² [Repealed].
(m)⁸⁶³ CONTINUED FUNDING FOR CENTERS.—

Continued
funding for
centers.

(1) IN GENERAL.—A nonprofit organization described in paragraph (2) shall be eligible to receive, subject to paragraph (3), a 3-year grant under this subsection.

(2) APPLICABILITY.—A nonprofit organization described in this paragraph is a non profit organization that has received funding under subsection (b) or (l).

(3) APPLICATION AND APPROVAL CRITERIA.—

⁸⁶² Subsection 29(l) was repealed by § 8305(b) of P.L. 110-28, approved May 25, 2007 (121 Stat. 209). The same section provides that the repeal is effective October 1 of the first full fiscal year after the date of enactment. Subsection 8305(c) of P.L. 110-28 provides:

Transitional Rule—Notwithstanding any other provision of law, a grant or cooperative agreement that was awarded under subsection (l) of section 29 of the Small Business Act (15 U.S.C. 656), on or before the day before the date described in subsection (b) of this section, shall remain in full force and effect under the terms, and for the duration, of such grant or agreement.

Text of former subsection 29(l) is reprinted below:

(l) SUSTAINABILITY PILOT PROGRAM.—

(1) IN GENERAL.—There is established a 4-year pilot program under which the Administration is authorized to award grants (referred to in this section as “sustainability grants”) on a competitive basis for an additional 5-year project under this section to any private nonprofit organization (or a division thereof)—

(A) that has received financial assistance under this section pursuant to a grant, contract, or cooperative agreement; and
(B) that—

(i) is in the final year of a 5-year project; or

(ii) has completed a project financed under this section (or any predecessor to this section) and continues to provide assistance to women entrepreneurs.

(2) CONDITIONS FOR PARTICIPATION.—In order to receive a sustainability grant, an organization described in paragraph (1) shall submit to the Administration an application, which shall include—

(A) a certification that the applicant—

(i) is a private nonprofit organization;

(ii) employs a full-time executive director or program manager to manage the center; and

(iii) as a condition of receiving a sustainability grant, agrees—

(I) to a site visit as part of the final selection process and to an annual programmatic and financial examination; and

(II) to the maximum extent practicable, to remedy any problems identified pursuant to that site visit or examination;

(B) information demonstrating that the applicant has the ability and resources to meet the needs of the market to be served by the women’s business center site for which a sustainability grant is sought, including the ability to fundraise;
(C) information relating to assistance provided by the women’s business center site for which a sustainability grant is sought in the area in which the site is located, including—

(i) the number of individuals assisted;

(ii) the number of hours of counseling, training, and workshops provided; and

(iii) the number of startup business concerns formed;

(D) information demonstrating the effective experience of the applicant in—

(i) conducting financial, management, and marketing assistance programs, as described in paragraphs (1), (2), and (3) of subsection (b), designed to impart or upgrade the business skills of women business owners or potential owners;

(ii) providing training and services to a representative number of women who are both socially and economically disadvantaged;

(iii) using resource partners of the Administration and other entities, such as universities;

(iv) complying with the cooperative agreement of the applicant; and

(v) the prudent management of finances and staffing, including the manner in which the performance of the applicant

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(A) CRITERIA.—Subject to subparagraph (B), the Administrator shall develop and publish criteria for the consideration and approval of applications by nonprofit organizations under this subsection.

(B) CONTENTS.—Except as otherwise provided in this subsection, the conditions for participation in the grant program under this subsection shall be the same as the conditions for participation in the program under subsection (l), as in effect on the date of enactment of this Act.

compared to the business Plan of the applicant and the manner in which grant funds awarded under subsection (b) were used by the applicant; and

(E) a 5-year Plan that projects the ability of the women's business center site for which a sustainability grant is sought—

(i) to serve women business owners or potential owners in the future by improving fundraising and training activities; and

(ii) to provide training and services to a representative number of women who are both socially and economically disadvantaged.

(3) REVIEW OF APPLICATIONS.—

(A) IN GENERAL.—The Administration shall—

(i) review each application submitted under paragraph (2) based on the information provided in subparagraphs (D) and (E) of that paragraph, and the criteria set forth in subsection (f);

(ii) as part of the final selection process, conduct a site visit at each women's business center for which a sustainability grant is sought; and

(iii) approve or disapprove applications for sustainability grants simultaneously with applications for grants under subsection (b).

(B) DATA COLLECTION.—Consistent with the annual report to Congress under subsection (j), each women's business center site that is awarded a sustainability grant shall, to the maximum extent practicable, collect information relating to—

(i) the number of individuals assisted;

(ii) the number of hours of counseling and training provided and workshops conducted;

(iii) the number of startup business concerns formed;

(iv) any available gross receipts of assisted concerns; and

(v) the number of jobs created, maintained, or lost at assisted concerns.

(C) RECORD RETENTION.—The Administration shall maintain a copy of each application submitted under this subsection for not less than 10 years.

(4) NON-FEDERAL CONTRIBUTION.—

(A) IN GENERAL.—Notwithstanding any other provision of this section, as a condition of receiving a sustainability grant, an organization described in paragraph (1) shall agree to obtain, after its application has been approved under paragraph (3) and notice of award has been issued, cash and in-kind contributions from non-Federal sources for each year of additional program participation in an amount equal to 1 non-Federal dollar for each Federal dollar.

(B) FORM OF NON-FEDERAL CONTRIBUTIONS.—Not more than 50 percent of the non-Federal assistance obtained for purposes of subparagraph (A) may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(5) TIMING OF REQUESTS FOR PROPOSALS.—In carrying out this subsection, the Administration shall issue requests for proposals for women's business centers applying for the pilot program under this subsection simultaneously with requests for proposals for grants under subsection (b).

Subsection 29(l) added by § 4(a) of P.L. 106-165, approved Dec. 9, 1999 (113 Stat. 1796). Effective date is Oct. 1, 1999, per § 6 of P.L. 106-165. Section 4(c) of the same law provides:

GUIDELINES.—Not later than 30 days after the date of enactment of this Act, the Administrator of the Small Business Administration shall issue guidelines to implement the amendments made by this section.

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(C) NOTIFICATION.—Not later than 60 days after the date of the deadline to submit applications for each fiscal year, the Administrator shall approve or deny any application under this subsection and notify the applicant for each application.

(4) AWARD OF GRANTS.—

(A) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall make a grant for the Federal share of the cost of activities described in the application to each applicant approved under this subsection.

(B) AMOUNT.—A grant under this subsection shall be for not more than \$150,000, for each year of that grant.

(C) FEDERAL SHARE.—The Federal share under this subsection shall not be more than 50 percent.

(D) PRIORITY.—In allocating funds made available for grants under this section, the Administrator shall give applications under this subsection or

§ 29(m)(5)(A) to (l) priority over first-time applications under subsection (b).
§ 29(o)(2)

(5) RENEWAL.—

(A) IN GENERAL.—The Administrator may renew a grant under this subsection for additional 3-year periods, if the nonprofit organization submits an application for such renewal at such time, in such manner, and accompanied by such information as the Administrator may establish.

(B) UNLIMITED RENEWALS.—There shall be no limitation on the number of times a grant may be renewed under subparagraph (A).

(n) PRIVACY REQUIREMENTS.—

Privacy requirements.

(1) IN GENERAL.—A women's business center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this section without the consent of such individual or small business concern, unless—

(A) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

(B) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a women's business center, but a disclosure under this subparagraph shall be limited to the information necessary for such audit.

(2) ADMINISTRATION USE OF INFORMATION.—This subsection shall not—

⁸⁶³ Subsections (m) and (n) added by § 8305(a) of P.L. 110-28, approved May 25, 2007 (121 Stat. 209).

(A) restrict Administration access to program activity data; or

(B) prevent the Administration from using client information (other than the information described in subparagraph (A)) to conduct client surveys.

(3) REGULATIONS.—The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under paragraph (1)(B).

(o)⁸⁶⁴ STUDY AND REPORT ON REPRESENTATION OF WOMEN.—

(1) STUDY.—The Administrator shall periodically conduct a study to identify industries, as defined under the North American Industry Classification System, underrepresented by small business concerns owned and controlled by women.

(2) REPORT.—Not later than 3⁸⁶⁵ years after the date of enactment of this subsection, and every 5 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the results of each study under paragraph (1) conducted during the 5-year period ending on the date of the report.

§ 30 to § 30(b)(2)(C)

§ 30⁸⁶⁶ OVERSIGHT OF REGULATORY ENFORCEMENT.

Oversight of Regulatory Enforcement. 15 USC 657.

(a) DEFINITIONS.—For purposes of this section, the term—

(1) “Board” means a Regional Small Business Regulatory Fairness Board established under subsection (c); and

“Board.”

(2) “Ombudsman” means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

“Ombudsman.”

(b) SBA ENFORCEMENT OMBUDSMAN.—

(1) Not later than 180 days after the date of enactment of this section, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

⁸⁶⁴ New subsection 29(o) added by § 1697(b) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2091).

⁸⁶⁵ Date changed from “5 years after the date of enactment” to “3 years after the date of enactment” by § 825(c) of P.L. 113-291, approved Dec. 19, 2014 (128 Stat. 3438).

⁸⁶⁶ Former § 30 redesignated as § 31 by § 222(1) of P.L. 104-121, approved March 29, 1996 (110 Stat. 860), and new § 30 added by § 222(2) of P.L. 104-121.

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(2) The Ombudsman shall—

(A) work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

Ombudsman, duties.

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

§ 30(b)(2)(D) to § 30(d)

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

Report to Congress.

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

(c) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

Regional Small Business Regulatory Fairness Boards.

(1) Not later than 180 days after the date of enactment of this section, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall—

(A) meet at least annually to advise the Ombudsman on matters of concern to small businesses relating to the enforcement activities of agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of agencies against small business concerns including any findings or recommendations of the Board as to agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (b).

(3) Each Board shall consist of five members, who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the Pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the Pleasure of the Administrator for not more than 1 year as chair.

(6) A majority of the members of the Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

§ 30(d)(1) to § 31(b)(1)(A)

(d) POWERS OF THE BOARDS.

Powers of the Boards.

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular Places of business in the performance of services for the Board.

§ 31.⁸⁶⁷ HUBZONE PROGRAM.

HUBZone Program.
15 USC 657a.

⁸⁶⁷ New section 31 added by § 602(b)(1)(B) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2629). Section 602(b)(2) of P.L. 105-135 provided that the HUBZone program would apply to the agencies listed in paragraphs (A) – (J) below. Section 210 of P.L. 106-113, approved Nov. 29, 1999 (113 Stat. 1501) added the Departments of Commerce, Justice and State ((K) – (M)) to the list. Amended § of P.L. 105-135 reads: “(2) INITIAL LIMITED APPLICABILITY.—During the period beginning on the date of enactment of this Act and ending on September 30, 2000, section 31 of the Small Business Act (as added by paragraph (1) of this subsection) shall apply only to procurements by—

- (A) the Department of Defense;
- (B) the Department of Agriculture;
- (C) the Department of Health and Human Services;
- (D) the Department of Transportation;

SMALL BUSINESS ACT

(a) IN GENERAL.—There is established within the Administration a program to be carried out by the Administrator to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this section.

(b) ELIGIBLE CONTRACTS—

(1) DEFINITIONS.—In this subsection—

(A) the term “contracting officer” has the meaning given that term in section 2101(1) of title 41, United States Code; and

“Contracting officer.”
[41 USC 2101(1)].

(B) the term “full and open competition” has the meaning given that term in section 107 of title 41, United States Code.

“Full and open competition.”
[41 USC 107].

(2) AUTHORITY OF CONTRACTING OFFICER.—⁸⁶⁸

(A) SOLE SOURCE CONTRACTS.—a contracting officer may award sole source contracts under this section to any qualified HUBZone small business concern, if—

(i) the qualified HUBZone small business concern is determined to be a responsible contractor with respect to performance of such contract opportunity, and the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(ii) the anticipated award price of the contract (including options) will not exceed—

(I) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) \$3,000,000, in the case of all other contract opportunities; and

-
- (E) the Department of Energy;
 - (F) the Department of Housing and Urban Development;
 - (G) the Environmental Protection Agency;
 - (H) the National Aeronautics and Space Administration;
 - (I) the General Services Administration;
 - (J) the Department of Veterans Affairs;
 - (K) the Department of Commerce;
 - (L) the Department of Justice; and
 - (M) the Department of State.

⁸⁶⁸ Phrase “[n]otwithstanding any other provision of law” deleted by § 1347(c)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2547).

(iii) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price;

(B) RESTRICTED COMPETITION.—A contract opportunity may⁸⁶⁹ be awarded pursuant to this section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price.

(C) APPEALS.—Not later than 5 days from the date the Administration is notified of a procurement officer’s decision not to award a contract opportunity under this section to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer’s decision, and within 15 days of such date the Administrator may file a written request for reconsideration of the contracting officer’s decision with the Secretary of the department or agency head.

§ 31(b)(3) to
§ 31(b)(4)

(3) PRICE EVALUATION PREFERENCE IN FULL AND OPEN COMPETITIONS.—

Price evaluation preference in full and open competitions.

(A) IN GENERAL.—Subject to subparagraph (B), in any case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed as being lower than the price offered by another offeror (other than another small business concern), if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(B)⁸⁷⁰ PROCUREMENT OF COMMODITIES.—For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preferences shall be—

Procurement of commodities.

(i) 10 percent, for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each commodity in a single invitation;

(ii) 5 percent, for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each commodity in a single invitation; and

(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

⁸⁶⁹ “May” substituted for “shall” by § 1347(c)(3)(A) and § 1347(b)(1) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2547). Section 1347(c) of P.L. 111-240 added the headings.

⁸⁷⁰ Subparagraphs 31(b)(3)(B) and (C) were added by § 612 (a)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

(C)⁸⁷¹ PROCUREMENT OF COMMODITIES FOR INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each commodity being procured in a single invitation.

(D) TREATMENT OF PREFERENCE.—A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

§ 31(c) to § 32

(4) RELATIONSHIP TO OTHER CONTRACTING PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or chapter 85 of title 41.

[18 USC 4124].
[41 USC ch 85].

(c) ENFORCEMENT; PENALTIES—

(1) VERIFICATION OF ELIGIBILITY.—In carrying out this section, the Administrator shall establish procedures relating to—

Eligibility verification.

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this section (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern under section 3(p)(5); and

(B) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under section 3(p)(5).

(2) EXAMINATIONS.—The procedures established under paragraph (1) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under section 3(p)(5).

Examinations.

(3) PROVISION OF DATA.—Upon the request of the Administrator, the Secretary of Labor, the Administrator of the Federal Emergency Management Agency⁸⁷², the Secretary of Housing and Urban Development, and the Secretary of the Interior (or the Assistant Secretary for Indian Affairs), shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

⁸⁷¹ Subparagraph 31(b)(3)(C) redesignated (D) and new subparagraph 31(b)(3)(C) added by § 153 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-650).

⁸⁷² Reference to FEMA added by § 866(c) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 932).

(4) PENALTIES.—In addition to the penalties described in section 16(d), any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a “HUBZone small business concern” for purposes of this section, shall be subject to—

(A) section 1001 of title 18, United States Code; and [18 USC 1001]

(B) sections 3729 through 3733 of title 31, United States Code. [31 USC 3729-3733]

(d)⁸⁷³ AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out the program established by this section \$10,000,000 for each of fiscal years 2004 through 2006. § 32(a) to § 32(c)(2)(B)(v)

§ 32⁸⁷⁴ VETERANS PROGRAMS.

(a) OFFICE OF VETERANS BUSINESS DEVELOPMENT.—There is established in the Administration an Office of Veterans Business Development, which shall be administered by the Associate Administrator for Veterans Business Development (in this section referred to as the “Associate Administrator”) appointed under section 4(b)(1).

Veterans Programs. 15 USC 657b. Office of Veterans Business Development.

(b) ASSOCIATE ADMINISTRATOR FOR VETERANS BUSINESS DEVELOPMENT.—The Associate Administrator—

(1) shall be an appointee in the Senior Executive Service;

(2) shall be responsible for the formulation, execution, and promotion of policies and programs of the Administration that provide assistance to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans. The Associate Administrator shall act as an ombudsman for full consideration of veterans in all programs of the Administration; and

(3) shall report to and be responsible directly to the Administrator.

(c)⁸⁷⁵ INTERAGENCY TASK FORCE—

Interagency task force.

(1) ESTABLISHMENT.—Not later than 90 days after the date of enactment of this subsection, the President shall establish an interagency task force to coordinate the efforts of Federal agencies necessary to improve capital and business development opportunities for, and ensure achievement of the pre-established Federal contracting goals for, small business concerns owned and controlled by service-disabled

⁸⁷³ New subsection 31(d) added by § 503(b) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Section 154 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-650) replaced “2001 through 2003” with “2004 through 2006.”

⁸⁷⁴ New section 32 added by § 201(b)(2) of P.L. 106-50, approved August 17, 1999 (113 Stat. 235).

⁸⁷⁵ Existing subsection 32(c) was redesignated as 32(f) and new subsection 32(c) added by § 102 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 624).

veterans and small business concerns owned and controlled by veterans (in this section referred to as the “task force”).

(2) MEMBERSHIP.—the members of the task force shall include—

(A) the Administrator, who shall serve as chairperson of the task force; and

(B) a senior level representative from—

(i) the Department of Veterans Affairs;

(ii) the Department of Defense;

(iii) the Administration (in addition to the Administrator);

(iv) the Department of Labor;

(v) the Department of the Treasury;

(vi) the General Services Administration;

(vii) the Office of Management and Budget; and

(viii) 4 representatives from a veterans service organization or military organization or association, selected by the President.

(3) DUTIES.—The task force shall—

(A) consult regularly with veterans service organizations and military organizations in performing the duties of the task force; and

(B) coordinate administrative and regulatory activities and develop proposals relating to—

(i) improving capital access and capacity of small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through loans, surety bonding, and franchising;

(ii) ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through expanded mentor-protégé assistance and matching such small business concerns with contracting opportunities;

§ 32(c)(2)(B)(vi) to
§ 32(d)(1)

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(iii) increasing the integrity of certifications of status as a small business concern owned and controlled by service-disabled veterans or a small business concern owned and controlled by veterans;

(iv) reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship opportunities;

(v) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and

(vi) making other improvements relating to the support for veterans business development by the Federal Government.

(d)⁸⁷⁶ PARTICIPATION IN TAP WORKSHOPS.—

Participation
in TAP
§ 32(d)(2) to
§ 32(f)

(1) IN GENERAL.—The Associate Administrator shall increase veteran outreach by ensuring that Veteran Business Outreach Centers regularly participate, on a nationwide basis, in the workshops of the Transition Assistance Program of the Department of Labor.

(2) PRESENTATIONS.—In carrying out paragraph (1), a Veteran Business Outreach Center may provide grants to entities located in Transition Assistance Program locations to make presentations on the opportunities available from the Administration for recently separating or separated veterans. Each presentation under this paragraph shall include, at a minimum, a description of the entrepreneurial and business training resources available from the Administration.

(3) WRITTEN MATERIALS.—The Associate Administrator shall—

(A) create written materials that provide comprehensive information on self-employment and veterans entrepreneurship, including information on resources available from the Administration on such topics; and

(B) make the materials created under subparagraph (A) available to the Secretary of Labor for inclusion in the Transition Assistance Program manual.

(4) REPORTS.—The Associate Administrator shall submit to Congress progress reports on the implementation of this subsection.

Reports.

(e) WOMEN VETERANS BUSINESS TRAINING.—The Associate Administrator shall—

Women
Veterans
Business
Training.

(1) compile information on existing resources available to women veterans for business training, including resources for—

⁸⁷⁶ New subsections 32(d) and (e) added by § 104 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 625).

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- (A) vocational and technical education;
- (B) general business skills, such as marketing and accounting; and
- (C) business assistance programs targeted to women veterans; and

§ 32(f)(1) to
§ 34(a)(3)

(2) disseminate the information compiled under paragraph (1) through an Business Outreach Centers and women’s business centers.

(f)⁸⁷⁷ AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

- (1) \$1,500,000 for fiscal year 2005; and
- (2) \$2,000,000 for fiscal year 2006.

Authorization of appropriations.

National
Veterans
Business
Development
Corporation.
15 USC 657c.

§ 33.⁸⁷⁸ Repealed.

§ 34.⁸⁷⁹ FEDERAL AND STATE TECHNOLOGY PARTNERSHIP PROGRAM.

⁸⁷⁷ New subsection 32(c) added by § 145 of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-647). Subsection 32(c) redesignated as 32(f) and new subsections (c) – (e) added by § 102 of P.L. 110-186, approved Feb. 14, 2008 (122 Stat. 624). Section 101 of P.L. 110-186 provides:

(a) In General.—There are authorized to be appropriated to the Office of Veterans Business Development of the administration, to remain available until expended—

- (1) \$2,100,000 for fiscal year 2008; and
- (2) \$2,300,000 for fiscal year 2009.

(b) Funding Offset.—Amounts necessary to carry out subsection (a) shall be offset and made available through the reduction of the authorization of funding under section 20(e)(1)(B)(if) of the Small Business Act (15 U.S.C. 631 note).

(c) Sense of Congress.—It is the sense of Congress that any amounts provided pursuant to this section that are in excess of amounts provided to the Administration for the Office of Veterans Business Development in fiscal year 2007, should be used to support Veterans Business Outreach Centers.

⁸⁷⁸ Section 33 repealed by § 1699(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2092). Section 1699(b) of P.L. 112-239 provides:

(b) CORPORATION.—On and after the date of enactment of this Act, the National Veterans Business Development Corporation and any successor thereto may not represent that the corporation is federally chartered or in any other manner authorized by the Federal Government.

For text of former section 33, see previous edition of this handbook. For text of Veterans Advisory Committee statute, see the related provisions of law at the end of this handbook.

⁸⁷⁹ New section 34 added by § 111(b)(2) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Section 111(a) of that law provides:

(a) FINDINGS.—Congress finds that—

- (1) programs to foster economic development among small high-technology firms vary widely among the States;
- (2) States that do not aggressively support the development of small high-technology firms, including participation by small business concerns in the SBIR program, are at a competitive disadvantage in establishing a business climate that is conducive to technology development; and
- (3) building stronger national, State, and local support for science and technology research in these disadvantaged States will expand economic opportunities in the United States, create jobs, and increase the competitiveness of the

(a) DEFINITIONS.—In this section and section 35, the following definitions apply:

- (1) APPLICANT.—The term “applicant” means an entity, organization, or individual that submits a proposal for an award or a cooperative agreement under this section. “Applicant.”
- (2) BUSINESS ADVICE AND COUNSELING.—The term “business advice and counseling” means provide advice and assistance on matters described in section 35(c)(2)(B) to small business concerns to guide them through the SBIR and STTR program process, from application to award and successful completion of each phase of the program. “Business advice and counseling.”
- (3)⁸⁸⁰ CATASTROPHIC INCIDENT.—The term “catastrophic incident” means a major disaster that is comparable to the description of a catastrophic incident in the National Response Plan of the Administration, or any successor thereto. § 34(a)(4) to § 35(c)(2)(B) “Catastrophic incident.”
- (4) FAST PROGRAM.—The term “FAST program” means the Federal and State Technology Partnership Program established under this section. “FAST program.”
- (5) MENTOR.—The term “mentor” means an individual described in section 35(c)(2). “Mentor.”
- (6) MENTORING NETWORK.—The term “Mentoring Network” means an association, organization, coalition, or other entity (including an individual) that meets the requirements of section 35(c). “Mentoring Network.”
- (7) RECIPIENT.—The term “recipient” means a person that receives an award or becomes party to a cooperative agreement under this section. “Recipient.”
- (8) SBIR PROGRAM.—The term “SBIR program” has the same meaning as in section 9(e)(4). “SBIR program.”
- (9) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. “State.”
- (10) STTR PROGRAM.—The term “STTR program” has the same meaning as in section 9(e)(6). “STTR program.”

(b) ESTABLISHMENT OF PROGRAM.—The Administrator shall establish a program to be known as the Federal and State Technology Partnership Program, the purpose of which shall be to strengthen the technological competitiveness of small business concerns in the States.

United States in the world market.

⁸⁸⁰ Paragraphs 34(a)(3) – (9) redesignated as (4) – (10) and new paragraph (3) added by § 2104(a) of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 691).

(c) GRANTS AND COOPERATIVE AGREEMENTS.—

(1) JOINT REVIEW.—In carrying out the FAST program under this section, the Administrator and the SBIR program managers at the National Science Foundation and the Department of Defense shall jointly review proposals submitted by applicants and may make awards or enter into cooperative agreements under this section based on the factors for consideration set forth in paragraph (2), in order to enhance or develop in a State—

(A) technology research and development by small business concerns;

(B) technology transfer from university research to technology-based small business concerns;

§ 34(c)(1)(D) to
§ 34(c)(2)(B)

(C) technology deployment and diffusion benefiting small business concerns;

(D) the technological capabilities of small business concerns through the establishment or operation of consortia comprised of entities, organizations, or individuals, including—

(i) State and local development agencies and entities;
(ii) representatives of technology-based small business concerns;

(iii) industries and emerging companies;

(iv) universities; and

(v) small business development centers; and

(E) outreach, financial support, and technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR program, including initiatives—

(i) to make grants or loans to companies to pay a portion or all of the cost of developing SBIR proposals;

(ii) to establish or operate a Mentoring Network within the FAST program to provide business advice and counseling that will assist small business concerns that have been identified by FAST program participants, program managers of participating SBIR agencies, the Administration, or other entities that are knowledgeable

about the SBIR and STTR programs as good candidates for the SBIR and STTR programs, and that would benefit from mentoring, in accordance with section 35;

(iii) to create or participate in a training program for individuals providing SBIR outreach and assistance at the State and local levels; and

(iv) to encourage the commercialization of technology developed through SBIR program funding.

(2) SELECTION CONSIDERATIONS.—In making awards or entering into cooperative agreements under this section, the Administrator and the SBIR program managers referred to in paragraph (1)—

(A) may only consider proposals by applicants that intend to use a portion of the Federal assistance provided under this section to provide outreach, financial support, or technical assistance to technology-based small business concerns participating or interested in participating in the SBIR program; and

§ 34(c)(2)(B)(i) to
§ 34(c)(4)

(B) shall consider, at a minimum—

(i) whether the applicant has demonstrated that the assistance to be provided would address unmet needs of small business concerns in the community, and whether it is important to use Federal funding for the proposed activities;

(ii) whether the applicant has demonstrated that a need exists to increase the number or success of small high-technology businesses in the State, as measured by the number of first phase and second phase SBIR awards that have historically been received by small business concerns in the State;

(iii) whether the projected costs of the proposed activities are reasonable;

(iv) whether the proposal integrates and coordinates the proposed activities with other State and local programs assisting small high-technology firms in the State; and

(v) the manner in which the applicant will measure the results of the activities to be conducted.

(vi)⁸⁸¹ whether the proposal addresses the needs of small business concerns—

(I) owned and controlled by women;

⁸⁸¹ New clause 34(c)(2)(B)(vi) added by § 8(a)(3) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 265).

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(II) owned and controlled by minorities; and

(III) located in areas that have historically not participated in the SBIR and STTR programs; and

(C)⁸⁸² shall give special consideration to an applicant that is located in an area affected by a catastrophic incident.

(3) PROPOSAL LIMIT.—Not more than 1 proposal may be submitted for inclusion in the FAST program under this section to provide services in any one State in any 1 fiscal year.

(4) PROCESS.—Proposals and applications for assistance under this section shall be in such form and subject to such procedures as the Administrator shall determine. The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations identified in paragraph (2)(B).⁸⁸³

§ 34(c)(5) to
§ 34(e)(2)(a)(i)

(5)⁸⁸⁴ ADDITIONAL ASSISTANCE FOR CATASTROPHIC INCIDENTS.—Upon application by an applicant that receives an award or has in effect a cooperative agreement under this section and that is located in an area affected by a catastrophic incident, the Administrator may—

(A) provide additional assistance to the applicant; and

(B) waive the matching requirements under subsection (e)(2).

(d) COOPERATION AND COORDINATION.—In carrying out the FAST program under this section, the Administrator shall cooperate and coordinate with—

(1) Federal agencies required by section 9 to have an SBIR program; and

(2) entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns, including—

(A) State and local development agencies and entities;

(B) State committees established under the Experimental Program to Stimulate Competitive Research of the National Science Foundation (as established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g));

[42 USC 1862g]

(C) State science and technology councils; and

⁸⁸² Subparagraph 34(c)(2)(C) added by § 2104(b) of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 691).

⁸⁸³ The last sentence of paragraph 34(c)(4) was added by § 8(b) of P.L. 107-50, approved Oct. 15, 2001 (115 Stat. 265).

⁸⁸⁴ Paragraph 34(c)(5) added by § 2104(c) of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 692).

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(D) representatives of technology-based small business concerns.

(e) ADMINISTRATIVE REQUIREMENTS.—

(1) COMPETITIVE BASIS.—Awards and cooperative agreements under this section shall be made or entered into, as applicable, on a competitive basis.

(2) MATCHING REQUIREMENTS.—

(A) IN GENERAL.—The non-Federal share of the cost of an activity (other than a Planning activity) carried out using an award or under a cooperative agreement under this section shall be—

(i) 50 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 18 States receiving the fewest SBIR first phase awards (as described in section 9(e)(4)(A));

(ii) except as provided in subparagraph (B), 1 dollar for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 16 States receiving the greatest number of such SBIR first phase awards; and

(iii) except as provided in subparagraph (B), 75 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in a State that is not described in clause (i) or (ii) that is receiving such SBIR first phase awards.

(B) LOW-INCOME AREAS.—The non-Federal share of the cost of the activity carried out using an award or under a cooperative agreement under this section shall be 50 cents for each Federal dollar that will be directly allocated by a recipient described in subparagraph (A) to serve small business concerns located in a qualified census tract, as that term is defined in section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986. Federal dollars not so allocated by that recipient shall be subject to the matching requirements of subparagraph (A).

(C) TYPES OF FUNDING.—The non-Federal share of the cost of an activity carried out by a recipient shall be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions, except that no such costs or contributions may be derived from funds from any other Federal program.

(D) RANKINGS.—For purposes of subparagraph (A), the Administrator shall reevaluate the ranking of a State once every 2 fiscal years, beginning with fiscal year 2001, based on the most recent statistics compiled by the Administrator.

(3) DURATION.—Awards may be made or cooperative agreements entered into under this section for multiple years, not to exceed 5 years in total.

(f) REPORTS.—

(1) INITIAL REPORT.—Not later than 120 days after the date of enactment of the Small Business Innovation Research Program Reauthorization Act of 2000, the Administrator shall prepare and submit to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives a report, which shall include, with respect to the FAST program, including Mentoring Networks—

Initial report to Congress.

(A) a description of the structure and procedures of the program;

(B) a management Plan for the program; and

(C) a description of the merit-based review process to be used in

§ 34(f)(2) to § 34(h)(2)

the program.

(2) ANNUAL REPORTS.—The Administrator shall submit an annual report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives regarding—

Annual reports to Congress.

(A) the number and amount of awards provided and cooperative agreements entered into under the FAST program during the preceding year;

(B) a list of recipients under this section, including their location and the activities being performed with the awards made or under the cooperative agreements entered into; and

(C) the Mentoring Networks and the mentoring database, as provided for under section 35, including—

(i) the status of the inclusion of mentoring information in the database required by section 9(k); and

(ii) the status of the implementation and description of the usage of the Mentoring Networks.

(g) REVIEWS BY INSPECTOR GENERAL.—

Inspector General reviews

(1) IN GENERAL.—The Inspector General of the Administration shall conduct a review of—

(A) the extent to which recipients under the FAST program are measuring the performance of the activities being conducted and the results of such measurements; and

(B) the overall management and effectiveness of the FAST program.

(2) REPORT.—During the first quarter of fiscal year 2004, the Inspector General of the Administration shall submit a report to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives on the review conducted under paragraph (1).

Inspector General report to Congress.

(h) PROGRAM LEVELS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out the FAST program, including Mentoring Networks, under this section and section 35, \$10,000,000 for each of fiscal years 2001 through 2005.

(2) MENTORING DATABASE.—Of the total amount made available under paragraph (1) for fiscal years 2001 through 2005, a reasonable amount, not to exceed a total of \$500,000, may be used by the Administration to carry out section 35(d).

§ 34(i) to § 35(c)(2)(B)(iii)

(i) TERMINATION.—The authority to carry out the FAST program under this section shall terminate on September 30, 2005.

Sunset.

§ 35.⁸⁸⁵ MENTORING NETWORKS.

Mentoring networks. 15 USC 657e.

(a) FINDINGS.—Congress finds that—

(1) the SBIR and STTR programs create jobs, increase capacity for technological innovation, and boost international competitiveness;

(2) increasing the quantity of applications from all States to the SBIR and STTR programs would enhance competition for such awards and the quality of the completed projects; and

(3) mentoring is a natural complement to the FAST program of reaching out to new companies regarding the SBIR and STTR programs as an effective and low-cost way to improve the likelihood that such companies will succeed in such programs in developing and commercializing their research.

(b) AUTHORIZATION FOR MENTORING NETWORKS.—The recipient of an award or participant in a cooperative agreement under section 34 may use a reasonable amount of such assistance for the establishment of a Mentoring Network under this section.

(c) CRITERIA FOR MENTORING NETWORKS.—A Mentoring Network established using assistance under section 34 shall—

(1) provide business advice and counseling to high technology small business concerns located in the State or region served by the Mentoring Network and

⁸⁸⁵ New § 35 added by § 112 of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763).

identified under section 34(c)(1)(E)(ii) as potential candidates for the SBIR or STTR programs;

(2) identify volunteer mentors who—

(A) are persons associated with a small business concern that has successfully completed one or more SBIR or STTR funding agreements; and

(B) have agreed to guide small business concerns through all stages of the SBIR or STTR program process, including providing assistance relating to—

(i) proposal writing;

(ii) marketing;

(iii) Government accounting;

(iv) Government audits;

(v) project facilities and equipment;

(vi) human resources;

(vii) third phase partners;

(viii) commercialization;

(ix) venture capital networking; and

(x) other matters relevant to the SBIR and STTR programs;

(3) have experience working with small business concerns participating in the SBIR and STTR programs;

(4) contribute information to the national database referred to in subsection (d); and

(5) agree to reimburse volunteer mentors for out-of-pocket expenses related to service as a mentor under this section.

(d) MENTORING DATABASE.—The Administrator shall—

(1) include in the database required by section 9(k)(1), in cooperation with the SBIR, STTR, and FAST programs, information on Mentoring Networks and mentors participating under this section, including a description of their areas of expertise;

§ 35(c)(2)(B)(iv) to
§ 36(a)

- (2) work cooperatively with Mentoring Networks to maintain and update the database;
- (3) take such action as may be necessary to aggressively promote Mentoring Networks under this section; and
- (4) fulfill the requirements of this subsection either directly or by contract.

§ 36.⁸⁸⁶ PROCUREMENT PROGRAM FOR SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.

Procurement program for small business § 36(a)(1) to § 37(a) controlled by service-disabled veterans. 15 USC 657f.

(a) SOLE SOURCE CONTRACTS.—In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if—

(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;

(2) the anticipated award price of the contract (including options) will not exceed—

(A) \$5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(B) \$3,000,000, in the case of any other contract opportunity; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

(b) RESTRICTED COMPETITION.—In accordance with this section, a contracting officer may award contracts on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.

Restricted competition.

(c) RELATIONSHIP TO OTHER CONTRACTING PREFERENCES.—A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18, United States Code, or chapter 85 of title 41.

[18 USC 4124].
[41 USC ch. 85].

⁸⁸⁶ New section 36 added by § 308 of P.L. 108-183, approved Dec. 16, 2003 (117 Stat. 262).

(d) ENFORCEMENT; PENALTIES.—Rules similar to the rules of paragraphs (5) and (6) of section 8(m) shall apply for purposes of this section.

(e) CONTRACTING OFFICER.—For purposes of this section, the term “contracting officer” has the meaning given such term in section 2101(1) of title 41, United States Code.

“Contracting officer.” [41 USC 2101)]

§ 37.⁸⁸⁷ COORDINATION OF DISASTER ASSISTANCE PROGRAMS WITH FEMA.

Coordination of disaster assistance programs with FEMA. 15 USC 657i.

§ 37(b) to § 38(b)(3)

(a) COORDINATION REQUIRED.—The Administrator shall ensure that the disaster assistance programs of the Administration are coordinated, to the maximum extent practicable, with the disaster assistance programs of the Federal Emergency Management Agency.

(b) REGULATIONS REQUIRED.—The Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall establish regulations to ensure that each application for disaster assistance is submitted as quickly as practicable to the Administration or directed to the appropriate agency under the circumstances.

Regulations.

(c) COMPLETION; REVISION.—The initial regulations shall be completed not later than 270 days after the date of the enactment of the Small Business Disaster Response and Loan Improvements Act of 2008. Thereafter, the regulations shall be revised on an annual basis.

(d) REPORT.—The Administrator shall include a report on the regulations whenever the Administration submits the report required by section 43.

Report on required regulations.

§ 38.⁸⁸⁸ INFORMATION TRACKING AND FOLLOW-UP SYSTEM FOR DISASTER ASSISTANCE.

Information tracking and follow-up system for disaster assistance. 15 USC 657j.

(a) SYSTEM REQUIRED.—The Administrator shall develop, implement, or maintain a centralized information system to track communications between personnel of the Administration and applicants for disaster assistance. The system shall ensure that whenever an applicant for disaster assistance communicates with such personnel on a matter relating to the application, the following information is recorded:

- (1) The method of communication.
- (2) The date of communication.
- (3) The identity of the personnel.

⁸⁸⁷ Former § 37 redesignated as § 44 and new § 37 added by § 12062 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1407). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2169).

⁸⁸⁸ New § 38 added by § 12067 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1410). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2172).

(4) A summary of the subject matter of the communication.

(b) FOLLOW-UP REQUIRED.—The Administrator shall ensure that an applicant for disaster assistance receives, by telephone, mail, or electronic mail, follow-up communications from the Administration at all critical stages of the application process, including the following:

(1) When the Administration determines that additional information or documentation is required to process the application.

(2) When the Administration determines whether to approve or deny the loan.

§ 38(c) to
§ 39(a)

(3) When the primary contact person managing the loan application has changed.

(c)⁸⁸⁹ REPORT ON WEB PORTAL FOR DISASTER LOAN APPLICATION STATUS.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this subsection, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report relating to the creation of a web portal to the [sic] track the status of applications for disaster assistance under section 7(b).

(2) CONTENTS.—The report under paragraph (1) shall include—

(A) information on the progress of the Administration in implementing the information system under subsection (a);

(B) recommendations from the Administration relating to the creation of a web portal for applicants to check the status of an application for disaster assistance under section 7(b), including a review of best practices and web portal models from the private sector;

(C) information on any related costs or staffing needed to implement such a web portal;

(D) information on whether such a web portal can maintain high standards for data privacy and data security;

(E) information on whether such a web portal will minimize redundancy among Administration disaster programs, improve management of the number of

⁸⁸⁹ Subsection 38(c) added by § 2303 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 696).

inquiries made by disaster applicants to employees located in the area affected by the disaster and to call centers, and reduce paperwork burdens on disaster victims; and

(F) such additional information as is determined necessary by the Administrator.

§ 39.⁸⁹⁰ DISASTER PROCESSING REDUNDANCY.

Disaster processing redundancy. 15 USC 657k.

§ 39(b) to § 40

(a) IN GENERAL.—The Administrator shall ensure that the Administration has place a facility for disaster loan processing that, whenever the Administration’s primary facility for disaster loan processing becomes unavailable, is able to take over all disaster loan processing from that primary facility within 2 days.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

Comprehensive disaster response plan. 15 USC. 657l.

§ 40.⁸⁹¹ COMPREHENSIVE DISASTER RESPONSE PLAN.

⁸⁹⁰ New § 39 added by § 12069 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1411). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2173).

⁸⁹¹ New § 40 added by § 12075 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1414). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2176). Section 12072 provides:

DEVELOPMENT AND IMPLEMENTATION OF MAJOR DISASTER RESPONSE PLAN.

(a) IN GENERAL.—Not later than 3 months after the date of enactment of this Act, the Administrator shall—

(1) by rule, amend the 2006 Atlantic hurricane season disaster response plan of the Administration (in this section referred to as the “disaster response plan”) to apply to major disasters; and

(2) submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives detailing the amendments to the disaster response plan.

(b) CONTENTS.—The report required under subsection (a)(2) shall include—

(1) any updates or modifications made to the disaster response plan since the report regarding the disaster response plan submitted to Congress on July 14, 2006;

(2) a description of how the Administrator plans to use and integrate District Office personnel of the Administration in the response to a major disaster, including information on the use of personnel for loan processing and loan disbursement;

(3) a description of the disaster scalability model of the Administration and on what basis or function the plan is scaled;

(4) a description of how the agency-wide Disaster Oversight Council is structured, which offices comprise its membership, and whether the Associate Deputy Administrator for Entrepreneurial Development of the Administration is a member;

(5) a description of how the Administrator plans to coordinate the disaster efforts of the Administration with State and local government officials, including recommendations on how to better incorporate State initiatives or programs, such as State-administered bridge loan programs, into the disaster response of the Administration;

(6) recommendations, if any, on how the Administration can better coordinate its disaster response operations with the operations of other Federal, State, and local entities;

(7) any surge plan for the disaster loan program of the Administration in effect on or after August 29, 2005 (including surge plans for loss verification, loan processing, mailroom, customer service or call center operations, and a continuity of operations plan);

(8) the number of full-time equivalent employees and job descriptions for the planning and disaster response staff of the Administration;

(9) the in-service and preservice training procedures for disaster response staff of the Administration;

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(a) **PLAN REQUIRED.**—The Administrator shall develop, implement, or maintain a comprehensive written disaster response plan. The plan shall include the following:

(1) For each region of the Administration, a description of the disasters most likely to occur in that region.

(2) For each disaster described under paragraph (1)—

(A) an assessment of the disaster;

(10) information on the logistical support plans of the Administration (including equipment and staffing needs, and detailed information on how such plans will be scalable depending on the size and scope of the major disaster; (11) a description of the findings and recommendations of the Administrator, if any, based on a review of the response of the Administration to Hurricane Katrina of 2005, Hurricane Rita of 2005, and Hurricane Wilma of 2005; and

(12) a plan for how the Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, will coordinate the provision of accommodations and necessary resources for disaster assistance personnel to effectively perform their responsibilities in the aftermath of a major disaster.

(c) **BIENNIAL DISASTER SIMULATION EXERCISE.**—

(1) **EXERCISE REQUIRED.**—The Administrator shall conduct a disaster simulation exercise at least once every 2 fiscal years. The exercise shall include the participation of, at a minimum, not less than 50 percent of the individuals in the disaster reserve corps and shall test, at maximum capacity, all of the information technology and telecommunications systems of the Administration that are vital to the activities of the Administration during such a disaster.

(2) **REPORT.**—The Administrator shall include a report on the disaster simulation exercises conducted under paragraph (1) each time the Administration submits a report required under section 43 of the Small Business Act, as added by this Act.

Section 12073 of P.L. 110-234 provides:

DISASTER PLANNING RESPONSIBILITIES.

(a) **ASSIGNMENT OF SMALL BUSINESS ADMINISTRATION DISASTER PLANNING RESPONSIBILITIES.**—The disaster planning function of the Administration shall be assigned to an individual appointed by the Administrator who—

(1) is not an employee of the Office of Disaster Assistance of the Administration;

(2) has proven management ability;

(3) has substantial knowledge in the field of disaster readiness and emergency response; and

(4) has demonstrated significant experience in the area of disaster planning.

(b) **RESPONSIBILITIES.**—The individual assigned the disaster planning function of the Administration shall report directly and solely to the Administrator and shall be responsible for—

(1) creating, maintaining, and implementing the comprehensive disaster response plan of the Administration described in section 12072;

(2) ensuring there are in-service and pre-service training procedures for the disaster response staff of the Administration;

(3) coordinating and directing the training exercises of the Administration relating to disasters, including disaster simulation exercises and disaster exercises coordinated with other government departments and agencies; and

(4) other responsibilities relevant to disaster planning and readiness, as determined by the Administrator.

(c) **COORDINATION.**—In carrying out the responsibilities described in subsection (b), the individual assigned the disaster planning function of the Administration shall coordinate with—

(1) the Office of Disaster Assistance of the Administration;

(2) the Administrator of the Federal Emergency Management Agency; and

(3) other Federal, State, and local disaster planning offices, as necessary.

(d) **RESOURCES.**—The Administrator shall ensure that the individual assigned the disaster planning function of the Administration has adequate resources to carry out the duties under this section.

SMALL BUSINESS ACT

(B) an assessment of the demand for Administration assistance most likely to occur in response to the disaster;

(C) an assessment of the needs of the Administration, with respect to such resources as information technology, telecommunications, human resources, and office space, to meet the demand referred to in subparagraph (B); and

(D) guidelines pursuant to which the Administration will coordinate with other Federal agencies and with State and local authorities to best respond to the demand referred to in subparagraph (B) and to best use the resources referred to in that subparagraph.

(b) COMPLETION; REVISION.—The first plan required by subsection (a) shall be completed not later than 180 days after the date of the enactment of this section. Thereafter, the Administrator shall update the plan on an annual basis and following any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 7(b)(9).

(c) KNOWLEDGE REQUIRED.—The Administrator shall carry out subsections (a) and (b) through an individual with substantial knowledge in the field of disaster readiness and emergency response.

(d) REPORT.—The Administrator shall include a report on the plan whenever the Administration submits the report required by section 43.

Report.

§ 41.⁸⁹² PLANS TO SECURE SUFFICIENT OFFICE SPACE.

Plans to secure sufficient office space.
15 USC 657m.

(a) PLANS REQUIRED.—The Administrator shall develop longterm plans to secure sufficient office space to accommodate an expanded workforce in times of disaster.

(e) REPORT.—Not later than 30 days after the date of enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing—

- (1) a description of the actions of the Administrator to assign an individual the disaster planning function of the Administration;
- (2) information detailing the background and expertise of the individual assigned; and
- (3) information on the status of the implementation of the responsibilities described in subsection (b).

Section 1105 of P.L. 114-88, approved Nov. 25, 2015 (129 Stat. 688) provides:

The Administrator of the Small Business Administration shall revise the comprehensive written disaster response plan required in section 40 of the Small Business Act, or any successor thereto, to incorporate the Administration's response to a situation in which an extreme volume of applications are received during the period of time immediately after a disaster, which shall include a plan to ensure that sufficient human and technological resources are made available and a plan to prevent delays in loan processing.

⁸⁹² New § 41 added by § 12076 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1415). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2177).

(b) REPORT.—The Administrator shall include a report on the plans developed under subsection (a) each time the Administration submits a report required under section 43.

Report.
Immediate
disaster
assistance
program.
15 USC 657n.

§ 42.⁸⁹³ IMMEDIATE DISASTER ASSISTANCE PROGRAM.

(a) PROGRAM REQUIRED.—The Administrator shall carry out a program, to be known as the Immediate Disaster Assistance program, under which the Administration participates on a deferred (guaranteed) basis in 85 percent of the balance of the financing outstanding at the time of disbursement of the loan if such balance is less than or equal to \$25,000 for businesses affected by a disaster.

§ 42(b) to
§ 43

(b) ELIGIBILITY REQUIREMENT.—To receive a loan guaranteed under subsection (a), the applicant shall also apply for, and meet basic eligibility standards for, a loan under subsection (b) or (c) of section 7.

(c) USE OF PROCEEDS.—A person who receives a loan under subsection (b) or (c) of section 7 shall use the proceeds of that loan to repay all loans guaranteed under subsection (a), if any, before using the proceeds for any other purpose.

(d) LOAN TERMS.—

(1) NO PREPAYMENT PENALTY.—There shall be no prepayment penalty on a loan guaranteed under subsection (a).

(2) REPAYMENT.—A person who receives a loan guaranteed under subsection (a) and who is disapproved for a loan under subsection (b) or (c) of section 7, as the case may be, shall repay the loan guaranteed under subsection (a) not later than the date established by the Administrator, which may not be earlier than 10 years after the date on which the loan guaranteed under subsection is disbursed.

(e) APPROVAL OR DISAPPROVAL.—The Administrator shall ensure that each applicant for a loan under the program receives a decision approving or disapproving of the application within 36 hours after the Administration receives the application.

Annual reports
on disaster
assistance.
15 USC 657o.

§ 43.⁸⁹⁴ ANNUAL REPORTS ON DISASTER ASSISTANCE.

⁸⁹³ New § 42 added by § 12084 of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1420). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2182).

⁸⁹⁴ New § 43 added by § 12091(g) of P.L. 110-234, enacted May 22, 2008 (122 Stat. 1426). The same language was enacted again in P.L. 110-246, June 18, 2008 (122 Stat. 2188). Sections 12091(a)-(f) provide:

(a) MONTHLY ACCOUNTING REPORT TO CONGRESS.—

(1) REPORTING REQUIREMENTS.—Not later than the fifth business day of each month during the applicable period for a major disaster, the Administrator shall submit to the Committee on Small Business and Entrepreneurship and the Committee on Appropriations of the Senate and to the Committee on Small Business and the Committee on Appropriations of the House of Representatives a report on the operation of the disaster loan program authorized under section 7 of the Small Business Act (15 U.S.C. 636) for that major disaster during the

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Not later than 45 days after the end of a fiscal year, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the disaster assistance operations of the Administration for that fiscal year. The report shall—

(1) specify the number of Administration personnel involved in such operations;

(2) describe any material changes to those operations, such as changes to technologies used or to personnel responsibilities;

preceding month.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) the daily average lending volume, in number of loans and dollars, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(B) the weekly average lending volume, in number of loans and dollars, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(C) the amount of funding spent over the month for loans, both in appropriations and program level, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(D) the amount of funding available for loans, both in appropriations and program level, and the percent by which each category has increased or decreased since the previous report under paragraph (1), noting the source of any additional funding;

(E) an estimate of how long the available funding for such loans will last, based on the spending rate;

(F) the amount of funding spent over the month for staff, along with the number of staff, and the percent by which each category has increased or decreased since the previous report under paragraph (1);

(G) the amount of funding spent over the month for administrative costs, and the percent by which such spending has increased or decreased since the previous report under paragraph (1);

(H) the amount of funding available for salaries and expenses combined, and the percent by which such funding has increased or decreased since the previous report under paragraph (1), noting the source of any additional funding; and

(I) an estimate of how long the available funding for salaries and expenses will last, based on the spending rate.

(b) WEEKLY DISASTER UPDATES TO CONGRESS FOR PRESIDENTIALLY DECLARED DISASTERS.—

(1) IN GENERAL.—Each week during a disaster update period, the Administration shall submit to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of Representatives a report on the operation of the disaster loan program of the Administration for the area in which the President declared a major disaster.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) the number of Administration staff performing loan processing, field inspection, and other duties for the declared disaster, and the allocations of such staff in the disaster field offices, disaster recovery centers, workshops, and other Administration offices nationwide;

(B) the daily number of applications received from applicants in the relevant area, as well as a breakdown of such figures by State;

(C) the daily number of applications pending application entry from applicants in the relevant area, as well as a breakdown of such figures by State;

(D) the daily number of applications withdrawn by applicants in the relevant area, as well as a breakdown of such figures by State;

(E) the daily number of applications summarily declined by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(F) the daily number of applications declined by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(G) the daily number of applications in process from applicants in the relevant area, as well as a breakdown of such figures by State;

(H) the daily number of applications approved by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

§ 43(4) to
§ 44(c)(1)

(3) describe and assess the effectiveness of the Administration in responding to disasters during that fiscal year, including a description of the number and amounts of loans made for damage and for economic injury; and

(4) describe the plans of the Administration for preparing to respond to disasters during the next fiscal year.

Consolidation of
contract
requirements.
15 U.S.C. 657q.

SEC. 44.⁸⁹⁵ CONSOLIDATION OF CONTRACT REQUIREMENTS.

(I) the daily dollar amount of applications approved by the Administration from applicants in the relevant area, as well as a breakdown of such figures by State;

(J) the daily amount of loans dispersed [sic], both partially and fully, by the Administration to applicants in the relevant area, as well as a breakdown of such figures by State;

(K) the daily dollar amount of loans disbursed, both partially and fully, from the relevant area, as well as a breakdown of such figures by State;

(L) the number of applications approved, including dollar amount approved, as well as applications partially and fully disbursed, including dollar amounts, since the last report under paragraph (1); and

(M) the declaration date, physical damage closing date, economic injury closing date, and number of counties included in the declaration of a major disaster.

(c) PERIODS WHEN ADDITIONAL DISASTER ASSISTANCE IS MADE AVAILABLE.—

(1) IN GENERAL.—During any period for which the Administrator declares eligibility for additional disaster assistance under paragraph (9) of section 7(b) of the Small Business Act (15 U.S.C. 632(b)), as amended by this Act, the Administrator shall, on a monthly basis, submit to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of Representatives a report on the disaster assistance operations of the Administration with respect to the applicable major disaster.

(2) CONTENTS.—Each report submitted under paragraph (1) shall specify—

(A) the number of applications for disaster assistance distributed;

(B) the number of applications for disaster assistance received;

(C) the average time for the Administration to approve or disapprove an application for disaster assistance;

(D) the amount of disaster loans approved;

(E) the average time for initial disbursement of disaster loan proceeds; and

(F) the amount of disaster loan proceeds disbursed.

(d) NOTICE OF THE NEED FOR SUPPLEMENTAL FUNDS.—On the same date that the Administrator notifies any committee of the Senate or the House of Representatives that supplemental funding is necessary for the disaster loan program of the Administration in any fiscal year, the Administrator shall notify in writing the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the need for supplemental funds for that loan program.

(e) REPORT ON CONTRACTING.—

(1) IN GENERAL.—Not later than 6 months after the date on which the President declares a major disaster, and every 6 months thereafter until the date that is 18 months after the date on which the major disaster was declared, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and to the Committee on Small Business of the House of Representatives regarding Federal contracts awarded as a result of that major disaster.

(2) CONTENTS.—Each report submitted under paragraph (1) shall include—

(A) the total number of contracts awarded as a result of that major disaster;

(B) the total number of contracts awarded to small business concerns as a result of that major disaster;

(C) the total number of contracts awarded to women and minority-owned businesses as a result of that major disaster; and

(D) the total number of contracts awarded to local businesses as a result of that major disaster.

(f) REPORT ON LOAN APPROVAL RATE.—

(1) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator shall submit a report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small

SMALL BUSINESS ACT

(a) DEFINITIONS.—In this section—

(1) the term “Chief Acquisition Officer” means the employee of a Federal agency appointed or⁸⁹⁶ designated as the Chief Acquisition Officer for the Federal agency under section 1702(a) of title 41, United States Code;

“Chief Acquisition Officer”.
[41 USC 1702(a)]

(2) the term “consolidation of contract requirements,” with respect to contract requirements of a Federal agency, means a use of a solicitation to obtain offers for a single contract⁸⁹⁷ or a multiple award contract—

“Consolidation of contract requirements”.

(A) to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited; or

(B) to satisfy requirements of the Federal agency for construction projects to be performed at 2 or more discrete sites; and

(3) the term “senior procurement executive” means an official designated under section 1702(c) of title 41, United States Code, as the senior procurement executive for a Federal agency.

“Senior procurement executive”.
[41 USC 1702(c)]

Business of the House of Representatives detailing how the Administration can improve the processing of applications under the disaster loan program of the Administration.

(2) CONTENTS.—The report submitted under paragraph (1) shall include—

(A) recommendations, if any, regarding—

(i) staffing levels during a major disaster;

(ii) how to improve the process for processing, approving, and disbursing loans under the disaster loan program of the Administration, to ensure that the maximum assistance is provided to victims in a timely manner;

(iii) the viability of using alternative methods for assessing the ability of an applicant to repay a loan, including the credit score of the applicant on the day before the date on which the disaster for which the applicant is seeking assistance was declared;

(iv) methods, if any, for the Administration to expedite loss verification and loan processing of disaster loans during a major disaster for businesses affected by, and located in the area for which the President declared, the major disaster that are a major source of employment in the area or are vital to recovery efforts in the region (including providing debris removal services, manufactured housing, or building materials);

(v) legislative changes, if any, needed to implement findings from the Accelerated Disaster Response Initiative of the Administration; and

(vi) a description of how the Administration plans to integrate and coordinate the response to a major disaster with the technical assistance programs of the Administration; and

(B) the plans of the Administrator for implementing any recommendation made under subparagraph (A).

⁸⁹⁵ New section 44 added by § 1313(a)(2) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2538).

⁸⁹⁶ Phrase “appointed or” added by § 822(b)(1)(A) of P.L. 113-291, approved Dec. 19, 2014 (128 Stat. 3436).

⁸⁹⁷ Phrase “or a multiple award contract to satisfy 2 or more requirements of the Federal agency for goods or services that have been provided to or performed for the Federal agency under 2 or more separate contracts lower in cost than the total cost of the contract for which the offers are solicited” replaced by language following the footnote signal by § 1671(a) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2084).

(b) **POLICY.**—The head of each Federal agency shall ensure that the decisions made by the Federal agency regarding consolidation of contract requirements of the Federal agency are made with a view to providing small business concerns with appropriate opportunities to participate as prime contractors and subcontractors in the procurements of the Federal agency.

(c) **LIMITATION ON USE OF ACQUISITION STRATEGIES INVOLVING CONSOLIDATION.**—

Limitations on § 44(c)(1)(A) to § 44(c)(2)(C) requirements.

(1) **IN GENERAL.**—Subject to paragraph (4), the head of a Federal agency may not carry out an acquisition strategy that includes a consolidation of contract requirements of the Federal agency with a total value of more than \$2,000,000, unless the senior procurement executive or Chief Acquisition Officer for the Federal agency, before carrying out the acquisition strategy—

- (A) conducts market research;
- (B) identifies any alternative contracting approaches that would involve a lesser degree of consolidation of contract requirements;
- (C) makes a written determination that the consolidation of contract requirements is necessary and justified;
- (D) identifies any negative impact by the acquisition strategy on contracting with small business concerns; and
- (E)⁸⁹⁸ ensures that steps will be taken to include small business concerns in the acquisition strategy.

(2) **DETERMINATION THAT CONSOLIDATION IS NECESSARY AND JUSTIFIED.**—

(A) **IN GENERAL.**—A senior procurement executive or Chief Acquisition Officer may determine that an acquisition strategy involving a consolidation of contract requirements is necessary and justified for the purposes of paragraph (1)(C) if the benefits of the acquisition strategy substantially exceed the benefits of each of the possible alternative contracting approaches identified under paragraph (1)(B).

(B) **SAVINGS IN ADMINISTRATIVE OR PERSONNEL COSTS.**—For purposes of subparagraph (A), savings in administrative or personnel costs alone do not constitute a sufficient justification for a consolidation of contract requirements in a procurement unless the expected total amount of the cost savings, as determined by the

⁸⁹⁸ Phrase “certifies to the head of the Federal agency” replaced with “ensures” by § 1671(b) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2084).

senior procurement executive or Chief Acquisition Officer, is expected to be substantial in relation to the total cost of the procurement.

§ 44(c)(3) to § 45(a)(3) (C)⁸⁹⁹ NOTICE.—Not later than 7 days after making a determination that an acquisition strategy involving a consolidation of contract requirements is necessary and identified under subparagraph (A), the senior procurement executive or Chief Acquisition Officer shall publish a notice on a public website that such determination has been made. Any solicitation for a procurement related to the acquisition strategy may not be published earlier than 7 days after such notice is published. Along with the publication of the solicitation, the senior procurement executive or Chief Acquisition Officer shall publish a justification for the determination, which shall include the information in subparagraphs (A) through (E) of paragraph (1).

(3) BENEFITS TO BE CONSIDERED.—The benefits considered for the purposes of paragraphs (1) and (2) may include cost and, regardless of whether quantifiable in dollar amounts—

- (A) quality;
- (B) acquisition cycle;
- (C) terms and conditions; and
- (D) any other benefit.

(4)⁹⁰⁰ Repealed.

§ 45.⁹⁰¹ MENTOR-PROTÉGÉ PROGRAMS.

Mentor-protégé programs. 15 USC 657r.

(a) ADMINISTRATION PROGRAM.—

(1) AUTHORITY.—The Administrator is authorized to establish a mentor-protégé program for all small business concerns.

⁸⁹⁹ New subparagraph 44(c)(2)(C) added by § 863(b) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 926).

⁹⁰⁰ Paragraph 44(c)(4) repealed by § 1671(c)(2) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2085). Text of former paragraph (4) is reprinted below:

(4) DEPARTMENT OF DEFENSE.—

(A) IN GENERAL.—The Department of Defense and each military department shall comply with this section until after the date described in subparagraph (C).

(B) RULE.—After the date described in subparagraph (C), contracting by the Department of Defense or a military department shall be conducted in accordance with section 2382 of title 10, United States Code.

(C) DATE.—The date described in this subparagraph is the date on which the Administrator determines the Department of Defense or a military department is in compliance with the Government-wide contracting goals under section 15.

⁹⁰¹ New section 45 added by § 1641 of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2076).

(2) **MODEL FOR PROGRAM.**—The mentor-protégé program established under paragraph (1) shall be identical to the mentor-protégé program of the Administration for small business concerns that participate in the program under section 8(a) (as in effect on the date of enactment of this section), except that the Administrator may modify the program to the extent necessary given the types of small business concerns included as protégés.

(3)⁹⁰² **PUERTO RICO BUSINESSES.**—During the period beginning on the date of enactment of this paragraph and ending on the date on which the Oversight Board established under section 101 of the Puerto Rico Oversight, Management, and Economic Stability Act (48 U.S.C. 2121) terminates, the Administrator shall identify potential incentives to a covered mentor that awards a subcontract to its covered protégé, including—

(A) positive consideration in any past performance evaluation of the covered mentor; and § 45(a)(3)(A) to § 45(b)(3)(C)

(B) the application of costs incurred for providing training to such covered protégé to the subcontracting plan (as required under paragraph (4) or (5) of section 8(d)) of the covered mentor.

(b) **PROGRAMS OF OTHER AGENCIES.**—

(1) **APPROVAL REQUIRED.**—Except as provided in paragraph (4), a Federal department or agency may not carry out a mentor-protégé program for small business concerns unless—

(A) the head of the department or agency submits a plan to the Administrator for the program; and

(B) the Administrator approves such plan.

(2) **BASIS FOR APPROVAL.**—The Administrator shall approve or disapprove a plan submitted under paragraph (1) based on whether the program proposed—

(A) will assist protégés to compete for Federal prime contracts and subcontracts; and

(B) complies with the regulations issued under paragraph (3).

(3) **REGULATIONS.**—Not later than 270 days after the date of enactment of this section, the Administrator shall issue, subject to notice and comment, regulations with respect to mentor-protégé programs, which shall ensure that such programs improve the ability of protégés to compete for Federal prime contracts and subcontracts and which shall address, at a minimum, the following:

⁹⁰² New paragraph 45(a)(3) added by § 861(d)(1) of P.L. 115-232, approved August 13, 2018 (Stat.).

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(A) Eligibility criteria for program participants, including any restrictions on the number of mentor-protégé relationships permitted for each participant, except that such restrictions shall not apply to up to 2 mentor-protégé relationships if such relationships are between a covered protégé and covered mentor⁹⁰³.

(B) The types of developmental assistance to be provided by mentors, including how the assistance provided shall improve the competitive viability of the protégés.
§ 45(b)(3)(D) to § 45(c)(1)

(C) Whether any developmental assistance provided by a mentor may affect the status of a program participant as a small business concern due to affiliation.

(D) The length of mentor-protégé relationships.

(E) The effect of mentor-protégé relationships on contracting.

(F) Benefits that may accrue to a mentor as a result of program participation.

(G) Reporting requirements during program participation.

(H) Postparticipation reporting requirements.

(I) The need for a mentor-protégé pair, if accepted to participate as a pair in a mentor-protégé program of any Federal department or agency, to be accepted to participate as a pair in all Federal mentor-protégé programs.

(J) Actions to be taken to ensure benefits for protégés and to protect a protégé against actions by a mentor that—

(i) may adversely affect the protégé's status as a small business concern; or

(ii) provide disproportionate economic benefits to the mentor relative to those provided the protégé.

(K)⁹⁰⁴ The types of assistance provided by a mentor to assist with compliance with the requirements of contracting with the Federal Government after award of a contract or subcontract under this section.

(4) LIMITATION ON APPLICABILITY.—Paragraph (1) does not apply to the following:

(A) Any mentor-protégé program of the Department of Defense.

⁹⁰³ Exception added by § 861(e) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁹⁰⁴ New paragraph 45(b)(3)(K) added by § 1813(c) of P.L. 114-328, approved Dec. 23, 2016 (130 Stat. 2653).

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(B) Any mentoring assistance provided under a Small Business Innovation Research Program or a Small Business Technology Transfer Program.

(C) Until the date that is 1 year after the date on which the Administrator issues regulations under paragraph (3), any Federal department or agency operating a mentor-protégé program in effect on the date of enactment of this section.

(c) REPORTING.—

§ 45(c)(1)(A) to
§ 45(d)(1)(B)

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this section, and annually thereafter, the Administrator shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate a report that—

- (A) identifies each Federal mentor-protégé program;
- (B) specifies the number of participants in each such program that are—
 - (i) small business concerns;
 - (ii) small business concerns owned and controlled by service-disabled veterans;
 - (iii) qualified HUBZone small business concerns;
 - (iv) small business concerns owned and controlled by socially and economically disadvantaged individuals; or
 - (v) small business concerns owned and controlled by women;
- (C) describes the type of assistance provided to protégés under each such program;
- (D) describes the benefits provided to mentors under each such program; and
- (E) describes the progress of protégés under each such program with respect to competing for Federal prime contracts and subcontracts.

(2) PROVISION OF INFORMATION.—The head of each Federal department or agency carrying out a mentor-protégé program shall provide to the Administrator, on an annual basis, the information necessary for the Administrator to submit a report required under paragraph (1).

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(d) DEFINITIONS.—In this section, the following definitions apply:

(1) MENTOR.—The term “mentor” means a for-profit business concern, of any size, that— “Mentor.”

§ 45(d)(2) to
§ 46(a)(2)

(A) has the ability to assist and commits to assisting a protégé to compete for Federal prime contracts and subcontracts; and

(B) satisfies any other requirements imposed by the Administrator.

(2) MENTOR-PROTÉGÉ PROGRAM.—The term “mentor-protégé program” means a program that pairs a mentor with a protégé for the purpose of assisting the protégé to compete for Federal prime contracts and subcontracts. “Mentor-protégé program.”

(3) PROTÉGÉ.—The term “protégé” means a small business concern that — “Protégé.”

(A) is eligible to enter into Federal prime contracts and subcontracts; and

(B) satisfies any other requirements imposed by the Administrator.

(4)⁹⁰⁵ COVERED MENTOR.—The term “covered mentor” means a mentor that enters into an agreement under this Act, or under any mentor-protégé program approved under subsection (b)(1), with a covered protégé. “Covered mentor.”

(5) COVERED PROTÉGÉ.—The term “covered protégé” means a protégé of a covered mentor that is a Puerto Rico business. “Covered protégé.”

(e) CURRENT MENTOR PROTÉGÉ AGREEMENTS.—Mentors and protégés with approved agreement in a program operating pursuant to subsection (b)(4)(C) shall be permitted to continue their relationship according to the terms specified in their agreement until the expiration date specified in the agreement.

(f) SUBMISSION OF AGENCY PLANS.—Agencies operating mentor protégé programs pursuant to subsection (b)(4)(C) shall submit the plans specified in subsection (b)(1)(A) to the Administrator within 6 months of the promulgation of rules required by subsection (b)(3). The Administrator shall provide initial comments on each plan within 60 days of receipt, and final approval or denial of each plan within 180 days after receipt.

Sec. 46.⁹⁰⁶ LIMITATIONS ON SUBCONTRACTING.

Limitations on subcontracting. 15 USC 657s.

⁹⁰⁵ New paragraphs 45(d)(4) and (5) added by § 861(d)(2) of P.L. 115-232, approved August 13, 2018 (Stat.).

⁹⁰⁶ New section 46 added by § 1651 of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2079).

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(a) IN GENERAL.—If awarded a contract under section 8(a), 8(m), 15(a), 31, or 36, a covered small business concern—

(1) in the case of a contract for services, may not expend on subcontractors more than 50 percent of the amount paid to the concern under the contract;

(2) in the case of a contract for supplies (other than from a regular dealer in such supplies), may not expend on subcontractors more than 50 percent of the amount, ~~the cost of materials, paid to the concern under the contract;~~ ^{§ 46(a)(3) to § 46(d)(1)}

(3) in the case of a contract described in paragraphs (1) and (2)—

(A) shall determine for which category, services (as described in paragraph (1)) or supplies (as described in paragraph (2)), the greatest percentage of the contract is awarded;

(B) shall determine the amount awarded under the contract for that category of services or supplies; and

(C) may not expend on subcontractors, with respect to the amount determined under subparagraph (B), more than 50 percent of that amount; and

(4) in the case of a contract⁹⁰⁷ which is principally for supplies from a regular dealer in such supplies, and which is not a contract principally for services or construction, shall supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(A) by the Administrator, after reviewing a determination by the applicable contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required by the contract; or

(B) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

(b) SIMILARLY SITUATED ENTITIES.—Contract amounts expended by a covered small business concern on a subcontractor that is a similarly situated entity shall not be considered subcontracted for purposes of determining whether the covered small business concern has violated a requirement established under subsection (a) or (d).

(c) MODIFICATIONS OF PERCENTAGES.—The Administrator may change, by rule (after providing notice and an opportunity for public comment), a percentage specified in paragraphs (1) through (4) of subsection (a) if the Administrator determines that

⁹⁰⁷ Phrase “for supplies from a regular dealer in such supplies” replaced by current language by § 864(b) of P.L. 114-92, approved Nov. 25, 2015 (129 Stat. 927).

such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(d) OTHER CONTRACTS.—

(1) IN GENERAL.—With respect to a category of contracts to which a requirement under subsection (a) does not apply, the Administrator is authorized to establish, after (after providing notice and an opportunity for public comment), a requirement that a covered small business concern may not expend on subcontractors more than a specified percentage of the amount paid to the concern under a contract in that category.

§ 46(d)(2) to § 46(e)(2)(B)

(2) UNIFORMITY.—A requirement established under paragraph (1) shall apply to all covered small business concerns.

(3) CONSTRUCTION PROJECTS.—The Administrator shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (1).

(e) DEFINITIONS.—In this section, the following definitions apply:

(1) COVERED SMALL BUSINESS CONCERN.—The term “covered small business concern” means a business concern that—

“Covered small business concern.”

(A) with respect to a contract awarded under section 8(a), is a small business concern eligible to receive contracts under that section;

(B) with respect to a contract awarded under section 8(m)—

(i) is a small business concern owned and controlled by women (as defined in that section); or

(ii) is a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(C) with respect to a contract awarded under section 15(a), is a small business concern;

(D) with respect to a contract awarded under section 31, is a qualified HUBZone small business concern; or

(E) with respect to a contract awarded under section 36, is a small business concern owned and controlled by service-disabled veterans.

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(2) SIMILARLY SITUATED ENTITY.—The term “similarly situated entity” means a subcontractor that—

“Similarly situated entity.”

(A) if a subcontractor for a small business concern, is a small business concern;

(B) if a subcontractor for a small business concern eligible to receive contracts under section 8(a), is such a concern;

§ 46(e)(2)(C) to § 47

(C) if a subcontractor for a small business owned and controlled by women (as defined in section 8(m)), is such a concern;

(D) if a subcontractor for a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law), is such a concern; or

(E) if a subcontractor for a qualified HUBZone small business concern, is such a concern; or

(F) if a subcontractor for a small business concern owned and controlled by service-disabled veterans, is such a concern.

(A) if a subcontractor for a small business concern, is a small business concern;

(B) if a subcontractor for a small business concern eligible to receive contracts under section 8(a), is such a concern;

(C) if a subcontractor for a small business owned and controlled by women (as defined in section 8(m)), is such a concern;

(D) if a subcontractor for a small business concern owned and controlled by women (as defined in that section) that is not less than 51 percent owned by 1 or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law), is such a concern; or

(E) if a subcontractor for a qualified HUBZone small business concern, is such a concern; or

(F) if a subcontractor for a small business concern owned and controlled by service-disabled veterans, is such a concern.

Office of
Credit Risk
Management
15 USC 657t

§ 47.⁹⁰⁸ OFFICE OF CREDIT RISK MANAGEMENT.

(a) ESTABLISHMENT.—There is established within the Administration the Office of Credit Risk Management (in this section referred to as the “Office”).

(b) DUTIES.—The Office shall be responsible for supervising—

(1) any lender making loans under section 7(a) (in this section referred to as a “7(a) lender”);

(2) any Lending Partner or Intermediary participant of the Administration in a lending program of the Office of Capital Access of the Administration; and

(3) any small business lending company or a non-Federally regulated lender without regard to the requirements of section 23.

(c) DIRECTOR.—

(1) IN GENERAL.—The Office shall be headed by the Director of the Office of Credit Risk Management (in this section referred to as the “Director”), who shall be a career appointee in the Senior Executive Service (as defined in section 3132 of title 5, United States Code).

(2) DUTIES.—The Director shall be responsible for oversight of the lenders and participants described in subsection (b), including by conducting periodic reviews of the compliance and performance of such lenders and participants.

⁹⁰⁸ New sections 47 and 48 added by § 3(a) of P.L. 115-189, approved June 21, 2018 (Stat.). Section 3(c)(1) provides:

(c) TRANSFER OF FUNCTIONS.—

(1) OFFICE OF CREDIT RISK MANAGEMENT.—All functions of the Office of Credit Risk Management of the Small Business Administration, including the personnel, assets, and obligation of the Office of Credit Risk Management, as in existence on the day before the date of the enactment of this Act, shall be transferred to the Office of Credit Risk Management, established under section 47 of the Small Business Act, as added by subsection (a).

Section 3(d)(1) of P.L. 115-189 provides:

(d) DEEMING OF NAME.—

(1) OFFICE OF CREDIT RISK MANAGEMENT.—Any reference in a law, regulation, guidance, [sic] document, paper, or other record of the United States to the Office of Credit Risk Management of the Small Business Administration shall be deemed a reference to the Office of Credit Risk Management, established under section 47 of the Small Business Act, as added by subsection (a).

(d)⁹⁰⁹ SUPERVISION DUTIES FOR 7(a) LENDERS.—With respect to 7(a) lenders, an employee of the Office shall—

(1) be present for and supervise any such review that is conducted by a contractor of the Office on the premise[sic] of the 7(a) lender; and

(2) supervise any such review that is not conducted on the premise[sic] of the 7(a) lender.

(e) ENFORCEMENT AUTHORITY AGAINST 7(a) LENDERS.—

(1) INFORMAL ENFORCEMENT AUTHORITY.—The Director may take an informal enforcement action against a 7(a) lender if the Director finds that the 7(a) lender has violated a statutory or regulatory requirement under section 7(a) or any requirement in a Standard Operating Procedure Manual or Policy Notice related to a program or function of the Office of Capital Access.

(2) FORMAL ENFORCEMENT AUTHORITY.—

(A) IN GENERAL.—With the approval of the Lender Oversight Committee established under section 48, the Director may take a formal enforcement action against any 7(a) lender if the Director finds that the 7(a) lender has violated—

(i) a statutory or regulatory requirement under section 7(a), including a requirement relating to credit elsewhere; or

(ii) any requirement described in a Standard Operating Procedures Manual or Policy Notice, related to a program or function of the Office of Capital Access.

⁹⁰⁹ Section 3(b) of P.L. 115-189 provides that, effective January 1, 2019, subsection 47(d) is amended to read:

(d) SUPERVISION DUTIES FOR 7(a) LENDERS.—

(1) REVIEWS.—With respect to 7(a) lenders, an employee of the Office shall—

(A) be present for and supervise any such review that is conducted by a contractor of the Office on the premise [sic] of the 7(a) lender; and

(B) supervise any such review that is not conducted on the premise [sic] of the 7(a) lender.

(2) REVIEW REPORT TIMELINE.—

(A) IN GENERAL.—Notwithstanding any other requirements of the Office or the Administrator, the Administrator shall develop and implement a review report timeline which shall—

(i) require the Administrator to—

(I) deliver a written report of the review to the 7(a) lender not later than 60 business days after the date on which the review is concluded; or

(II) if the Administrator expects to submit the report after the end of the 60-day period described in clause (I), notify the 7(a) lender of the expected date of submission of the report and the reason for the delay; and

(ii) if a response by the 7(a) lender is requested in a report submitted under subparagraph (A), require the 7(a) lender to submit responses to the Administrator not later than 45 business days after the date on which the 7(a) lender receives the report.

(B) EXTENSION.—The Administrator may extend the time frame described in subparagraph (A)(i)(II) with respect to a 7(a) lender as the Administrator determines necessary.

(B) ENFORCEMENT ACTIONS.—An enforcement action imposed on a 7(a) lender by the Director under subparagraph (A) shall be based on the severity or frequency of the violation and may include assessing a civil monetary penalty against the 7(a) lender in an amount that is not greater than \$250,000.

(3) APPEAL BY LENDER.—A 7(a) lender may appeal an enforcement action imposed by the Director described in this subsection to the Office of Hearings and Appeals established under section 5(i) or to an appropriate district court of the United States.

(f) REGULATIONS.—Not later than 1 year after the date of the enactment of this section, the Administrator shall issue regulations, after opportunity for notice and comment, to carry out subsection (e).

§ 47(h) to
§ 47(h)(2)(H)

(g) SERVICING AND LIQUIDATION RESPONSIBILITIES.—During any period during which a 7(a) lender is suspended or otherwise prohibited from making loans under section 7(a), the 7(a) lender shall remain obligated to maintain all servicing and liquidation activities delegated to the lender by the Administrator, unless otherwise specified by the Director.

(h) PORTFOLIO RISK ANALYSIS OF 7(a) LOANS.—

(1) IN GENERAL.—The Director shall annually conduct a risk analysis of the portfolio of the Administration with respect to all loans guaranteed under section 7(a).

(2) REPORT TO CONGRESS.—On December 1, 2018, and every December 1 thereafter, the Director shall submit to Congress a report containing the results of each portfolio risk analysis conducted under paragraph (1) during the fiscal year preceding the submission of the report, which shall include—

(A) an analysis of the overall program risk of loans guaranteed under section 7(a);

(B) an analysis of the program risk, set forth separately by industry concentration;

(C) without identifying individual 7(a) lenders by name, a consolidated analysis of the risk created by the individual 7(a) lenders responsible for not less than 1 percent of the gross loan approvals set forth separately for the year covered by the report by—

(i) the dollar value of the loans made by such 7(a) lenders;

and

(ii) the number of loans made by such 7(a) lenders;

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(D) steps taken by the Administrator to mitigate the risks identified in subparagraphs (A), (B), and (C);

(E) the number of 7(a) lenders, the number of loans made, and the gross and net dollar amount of loans made;

(F) the number and dollar amount of total losses, the number and dollar amount of total purchases, and the percentage and dollar amount of recoveries at the Administration;

(G) the number and type of enforcement actions recommended by the Director;

(H) the number and type of enforcement actions approved by the Lender Oversight Committee established under section 48;

§ 47(h)(2)(I) to § 48(b)(1)

(I) the number and type of enforcement actions disapproved by the Lender Oversight Committee; and

(J) the number and dollar amount of civil monetary penalties assessed.

(i) BUDGET SUBMISSION AND JUSTIFICATION.—The Director shall annually provide, in writing, a fiscal year budget submission for the Office and a justification for such submission to the Administrator. Such submission and justification shall—

(1) include salaries and expenses of the Office and the charge for the lender oversight fees;

(2) be submitted at or about the time of the budget submission by the President under section 1105(a) of title 31; and

(3) be maintained in an indexed form and made available for public review for a period of not less than 5 years beginning on the date of submission and justification.

§ 48.⁹¹⁰ LENDER OVERSIGHT COMMITTEE.

Lender Oversight Committee.
15 USC 657u

⁹¹⁰ Section 3(c)(2) of P.L. 115-189 provides:

(c) TRANSFER OF FUNCTIONS.—

(2) LENDER OVERSIGHT COMMITTEE.—All functions of the Lender Oversight Committee of the Small Business Administration, including the personnel, assets, and obligation of the Lender Oversight Committee, as in existence on the day before the date of the enactment of this Act, shall be transferred to the Lender Oversight Committee established under section 48 of the Small Business Act, as added by subsection (a).

Section 3(d)(2) of P.L. 115-189 provides:

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(a) ESTABLISHMENT.—There is established within the Administration the Lender Oversight Committee (in this section referred to as the “Committee”).

(b) MEMBERSHIP.—The Committee shall consist of at least 8 members selected by the Administrator, of which—

§ 48(b)(2) to
§ 49

(1) 3 members shall be voting members, 2 of whom shall be career employees in the Senior Executive Service (as defined in section 3132 of title 5, United States Code); and

(2) the remaining members shall be nonvoting members who shall serve in an advisory capacity on the Committee.

(c) DUTIES.—The Committee shall—

(1) review reports on lender oversight activities;

(2) review formal enforcement action recommendations of the Director of the Office of Credit Risk Management with respect to any lender making loans under section 7(a) and any Lending Partner or Intermediary participant of the Administration in a lending program of the Office of Capital Access of the Administration.

(3) in carrying out paragraph (2) with respect to formal enforcement actions taken under subsection (d) or (e) of section 23, vote to recommend or not recommend action to the Administrator or a designee of the Administrator;

(4) in carrying out paragraph (2) with respect to any formal enforcement action not specified under subsection (d) or (e) of section 23, vote to approve, disapprove, or modify the action;

(5) review, in an advisory capacity, any lender oversight, portfolio risk management, or program integrity matters brought by the Director; and

(6) take such other actions and perform such other functions as may be delegated to the Committee by the Administrator.

(d) MEETINGS.—

(1) IN GENERAL.—The Committee shall meet as necessary, but not less frequently than on a quarterly basis.

(d) DEEMING OF NAME.—

(2) LENDER OVERSIGHT COMMITTEE.—Any reference in a law, regulation, guidance, document, paper, or other record of the United States to the Lender Oversight Committee of the Small Business Administration shall be deemed a reference to the Lender Oversight Committee, established under section 48 of the Small Business Act, as added by subsection (a).

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(2) REPORTS.—The Committee shall submit to the Administrator a report detailing each meeting of the Committee, including if the Committee does or does not vote to approve a formal enforcement action of the Director of the Office of Credit Risk Management with respect to a lender.

§ 49.⁹¹¹ All laws and parts of laws inconsistent with this Act are hereby repealed to the extent of such inconsistency.

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note.

⁹¹¹ Former § 21 redesignated as § 30 by § 202 of P.L. 96-302, approved July 2, 1980 (94 Stat. 833). Section 30 redesignated as § 31 by § 222(1) of P.L. 104-121, approved March 29, 1996 (110 Stat. 860). Section 31 redesignated as § 32 by § 602(b)(1)(A) of P.L. 105-135, approved Dec. 2, 1997 (111 Stat. 2629). Section then redesignated as § 34 by § 201(b)(1) of P.L. 106-50, approved August 17, 1999 (113 Stat. 235). Section was redesignated as § 36 by § 111(b)(1) of P.L. 106-554, approved Dec. 21, 2000 (114 Stat. 2763). Section was redesignated as § 37 by § 308 of P.L. 108-183, approved Dec. 16, 2003 (117 Stat. 2662). Section was redesignated as § 44 by § 12062(1) of P.L. 108-234, enacted May 22, 2008 (122 Stat. 1407) and again by the same section in P.L. 110-246, enacted June 18, 2008 (122 Stat. 2169). Redesignated as § 45 by § 1313(a)(1) of § P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2538). Redesignated as § 47 by § 1641(1) of P.L. 112-239, approved Jan. 3, 2013 (126 Stat. 2077). Redesignated as § 49 by § 3(a) of P.L. 115-232, approved August 13, 2018 (Stat.).