(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.

"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.

Depositaries of funds. 15 USC 635.

§ 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 this 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.

(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.

Business loans. 15 USC 636.

§ 7. (a)[124] LOANS TO SMALL BUSINESS CONCERNS; ALLOWABLE PURPOSES; QUALIFIED BUSINESS; RESTRICTIONS AND LIMITATIONS.—The Administration is

[124]Section 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 Administrtion 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.

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,[125] for 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.[126] 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.[127]

(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.

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

[126] The first sentence in this clause was added by § 4(a)(2) of P.L. 115-189, approved June 21, 2018 (132 Stat. 1497).

[127]The substance of this clause 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).

(ii)[128] 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.[129]—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)[130] LENDING LIMITS OF LENDERS.—On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the sole purpose

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[128] Subparagraph 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.

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

[130] 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.

SBA participation.

(2)[131] LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

(A) IN GENERAL.—Except as provided in subparagraphs (B), (D), and (E)[132], in an agreement to participate in a loan on a deferred basis under this

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[131]Paragraph 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).

[132] 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 enactment of this Act."

subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

(i) 75[133] percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance exceeds $150,000;[134] or

(ii) 85[135] 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.

Export-Import Bank lenders.

(ii)[136] 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.

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[133] 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.

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

[135] 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.

[136] 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."

(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."

(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 loans[137] 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.

(D)[138] PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.— In[139] 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. Export Working Capital Program.

(E)[140] 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)[141] No loan shall be made under this subsection—

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

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

[139] 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."

[140] 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."

[141]Paragraph 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:

(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),[142] except as provided in subparagraph (B);

(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 $4,500,000[143] (or if the gross loan amount would exceed $5,000,000), of which not more than $4,000,000[144] 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 subsection[145] 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

Interest rates.

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.

[142] 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.

[143] 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.

[144] 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).

[145] The 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."

one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum:[146] Provided, That for those loans to assist any 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.[147]

(B)[148] 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.

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

(C)[150] 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

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[146]Paragraph 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 of 5 1/2%.

[147]This proviso on interest rates originally provided in § 7(h)(2).

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

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

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

(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— Subsidy recoupment fee.

(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.

(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.[151] Maximum term.

(6) All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment:[152] 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] [153]

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[151]Substance 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).

[152]Language of this paragraph 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.

[153]Subparagraph 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).

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 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.

Grace period.

(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.

Disabled veterans. [38 USC 4211]

(8)[154] 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).

Construction loans.

(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.[155]

Handicapped loans.

(10) The Administration may provide guaranteed[156] 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.[157]

Low-income areas.

(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.

Energy measures.

(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

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[154]Paragraph 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).

[155]This 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.

[156] 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).

[157]See § 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).

measures: Provided, however, That such loan proceeds shall not be used primarily for research and development.[158]

(B)[159] 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.

Development companies.

(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.

(14)[160] 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 and[161] 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)[162] TERMS.—

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

(ii) FEES.—

[158]See § 3(g) for definition of "energy measures," previously at § 7(l).

[159]Subparagraph 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.

[160] 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).

[161]Subparagraph 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.

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

(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.

(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.

Qualified employee trusts.

(15) (A)[163] 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,[164] 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)[165] 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 concern[166] 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—

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[163]Loan 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.

[164] This phrase added by § 862(b)(1)(A)(i)(II) of P.L. 115-232, approved August 13, 2018 (132 Stat. 1897).

[165] Subparagraph 7(a)(15)(A) rewritten to add clause (ii) by § 862(b)(1) of P.L. 115-232, approved August 13, 2018 (132 Stat. 1897).

[166] Phrase "or by the small business concern" added by § 862(b)(1)(A)(ii) of P.L. 115-232, approved August 13, 2018 (132 Stat. 1898).

(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.

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

(iv)[167] with respect to a loan made to a trust, or to a cooperative in accordance with paragraph (35)—

(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.

(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 include[168]-- Report to Congress.

[167] New clause 7(a)(15)(B)(iv) added by § 862(b)(1)(A)(ii) of P.L. 115-232, approved August 13, 2018 (132 Stat. 1898).

[168] Subparagraph 7(a)(15)(E) amended to include clauses (i) through (iii) by § 862(f) of P.L. 115-232, approved August 13, 2018 (132 Stat. 1900). 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.

(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 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;

(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)[169] 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 ty 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)[170] INTERNATIONAL TRADE.— International trade.

(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.

[169] New subparagraphs 7(a)(15)(F) and (G) added by § 862(b)(1)(A)(iii) of P.L. 115-232, approved August 13, 2018 (132 Stat. 1898).

[170]New 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:

(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 subsection[171]; or

(iii)[172] 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.

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(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 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."

[171] 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."

[172] 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."

(ii)[173] 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.

Engaged in international trade.

(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.

Adversely affected by international trade.

(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—

(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.

List of export finance lenders.

(F)[174] 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—

[173] 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."

[174] New subparagraph 7(a)(16)(F) added by § 1206(g) of P.L. 111-240, approved Sept. 27, 2010 (124 Stat. 2532).

(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.

(18)[175] GUARANTEE FEES.— Guarantee fees.

(A)[176] 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

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[175]Paragraph 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.

Paragraph 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.

Subsection 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.

Section 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

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 not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

(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.

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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 $1,000,000,000.
(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.

[176] 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.

(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)[177] [Deleted.]

(19)[178] (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,[179] the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.[180]

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[177] Subparagraph 7(a)(18)(C) deleted by § 102 (b) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-635). Text of former subparagraph 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:
> (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.

Subparagraph 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.

[178]Paragraph 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).

[179]Phrase "during fiscal years 1989, 1990, and 1992" deleted by § 4 of P.L. 102-191, approved Dec. 5, 1991 (105 Stat. 1591).

[180]Sections 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:

(C)[181] Authority to liquidate loans.— Liquidate loans.

(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)[182] (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

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(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.

[181]New subparagraph 7(a)(19)(C) added by § 103(b) of P.L. 104-208, approved Sept. 30, 1996 (110 Stat. 3009-726).

[182]Paragraph 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.

(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.

(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.

Defense economic transition loans.

(21)[183] (A) The Administration may make loans on a guaranteed basis under the authority of this subsection—

[183]Paragraph 7(a)(21) added by § 211 of P.L. 102-366, approved Sept. 4, 1992 (106 Stat. 997). The phrase “on a guaranteed

(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

(ii) to a qualified individual or a veteran[184] 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)[185] 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.

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basis" was added by § 605(a) of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4203).

[184] Reference to veterans added by § 404 of P.L. 106-50, approved August 17, 1999 (113 Stat. 246).

(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.

(22)[186] 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. Penalty fee.

(23)[187] YEARLY FEE.— Yearly fee.

(A)[188] 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

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[185]Subparagraph 7(a)(21)(E) added by § 603 of P.L. 103-403, approved Oct. 22, 1994 (108 Stat. 4202).

[186]Paragraph 7(a)(22) added by § 4 of P.L. 103-81, approved August 13, 1993 (107 Stat. 781).

[187]New paragraph 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."

[188] 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

percent per year of the outstanding balance of the deferred participation share of the loan, in 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 yearly[189] fee assessed under subparagraph (A) shall be payable by the participating lender and shall not be charged to the borrower.

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 the enactment of this section and ending on September 30, 2004.

Section 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 $1,00,000,000.
(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.

[189] "Annual" changed to "yearly" by § 102(c)(3) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-636).

(C)[190] 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

(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)[191] 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 Congress.

(25)[192] LIMITATION ON CONDUCTING PILOT PROJECTS.—

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[190] New subparagraph 7(a)(23)(C) added by § 102(c)(4) of P.L. 108-447, approved Dec. 8, 2004 (118 Stat. 2809-636).

[191]New paragraph 7(a)(24) added by § 5 of P.L. 104-36, approved Oct. 12, 1995 (109 Stat. 297).

[192]Paragraph 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