15 USCS § 634

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United States Code Service > TITLE 15. COMMERCE AND TRADE (Chs. 1 — 120) > CHAPTER 14A. AID TO SMALL BUSINESS (§§ 631 — 657u)

§ 634. General powers

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

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

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

(2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this 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;

(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;

(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) [*41 USCS*

§ 6101], 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 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) [*15 USCS § 636(a)*, (b)];

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

(7) in addition to any powers, functions, privileges and immunities otherwise vested in him, take any and all actions (including the procurement of the services of attorneys by contract in any office where an attorney or attorneys are not or cannot be economically employed full time to render such services) when he determines such actions are necessary or desirable in making, servicing, compromising, modifying, liquidating, or otherwise dealing with or realizing on loans made under the provisions of this Act: *Provided*, That with respect to deferred participation loans, including loans guaranteed under paragraph (15) or (35) of section 7(a) [*15 USCS § 636(a)*], the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation;

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with the Travel Expense Act of 1949 [*5 USCS §§ 5701* et seq.], 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) [*15 USCS § 636(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: *Provided* , That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities;

(9) accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 7(b) [*15 USCS § 636(b)*];

(10) upon purchase by the Administration of any deferred participation entered into under section 7 of this Act [*15 USCS § 636*], continue to charge a rate of interest not to exceed that initially charged by the participating institution on the amount so purchased for the remaining term of the indebtedness;

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this 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, subpena 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 subpena issued to, any person, including a recipient or participant, the Administration may invoke the aid of any court of the United States within the jurisdiction of which such investigation or proceeding is carried on, or where such person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of books, papers, and documents; and such court may issue an order requiring such person to appear before the Administration, there to produce records, if so ordered, or to give testimony touching the matter under investigation. Any failure to obey such order of the court may be punished by such court as a contempt thereof. All process in any such case may be served in the judicial district whereof such person is an inhabitant or wherever he may be found;

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

> **(A)** not to exceed $100 for each loan servicing action (other than a loan assumption) requested after disbursement of the loan, including any substitution of collateral, release or substitution of a guarantor, reamortization, or similar action;
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> **(B)** not to exceed $300 for loan assumptions;
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> **(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
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> **(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) require any lender authorized to make loans under section 7 of this Act [*15 USCS § 636*] to pay examination and review fees, which shall be deposited in the account for salaries and expenses of the Administration, and shall be available for the costs of examinations, reviews, and other lender oversight activities.

(c) Procurement of experts and consultants; compensation and expenses. To such extent as he finds necessary to carry out the provisions of this 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., sec. 5) [*41 USCS § 6101*]. 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 away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by *section 5703 of title 5, United States Code*.

(d) Safety deposit box rentals. Section 3648 of the Revised Statutes (31 U.S.C. 529) [*31 USCS § 3324(a)* and (b)] shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

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

(1) Subject to the requirements and conditions contained in this subsection, upon application by a small business concern which is the recipient of a loan made under this 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.

(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) and 7(i)(1) of this Act [*15 USCS § 636(a)(4)(C)*, (i)(1)], the Administration may extend the maturity of any loan on which the Administration undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.

(4)

(A) Prior to the undertaking or suspension by the Administration of any small business concern's obligation under this subsection, the Administration, consistent with the purposes sought to be achieved herein, shall require the small business concern to agree in writing to repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either—

(i) by periodic payments not less in amount or less frequently falling due than those which were due under the loan during such period, or

(ii) pursuant to a repayment schedule agreed upon by the Administration and the small business concern, or

(iii) by a combination of the payments described in clause (i) and clause (ii).

(B) In addition to requiring the small business concern to execute the agreement described in subparagraph (A), the Administration shall, prior to the undertaking or suspension of the obligation, take such action, and require the small business concern to take such action as the Administration deems appropriate in the circumstances, including the provision of such security as the Administration deems necessary or appropriate to insure that the rights and interests of the lender (Small Business Administration or participant) will be safeguarded adequately during and after the period in which such obligation is so undertaken or suspended.

(5) The term "required payments" with respect to any loan means payments of principal and interest under the loan.

(f) Sale of guaranteed portion of loans by lender or subsequent holder; limitations; secondary market.

(1) The guaranteed portion of any loan made pursuant to this 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:

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

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

(C) each loan, except each loan made under section 7(a)(14) [*15 USCS § 636(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 result of secondary market operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 7(a) [*15 USCS § 636(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.

(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 Act [15 USCS § 636(a)], 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) [15 USCS § 636(a)(6)(C)] or subsection (e) of this section.

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

(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): *Provided* , That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

(2) The Administration is authorized, upon such terms and conditions as are deemed appropriate, to guarantee the timely payment of the principal of and interest on trust certificates issued by the Administration or its agent for purposes of this subsection. Such guarantee shall be limited to the extent of principal and interest on the guaranteed portions of loans which compose the trust or pool. In the event that a loan in such trust or pool is prepaid, either voluntarily or in the event of default, the guarantee of timely payment of principal and interest on the trust certificates shall be reduced in proportion to the amount of principal and interest such prepaid loan represents in the trust or pool. Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administration only through the date of payment on the guarantee. During the term of the trust certificate, it may be called for redemption due to prepayment or default of all loans constituting the pool.

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

(4)

(A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration. Any such fee imposed by the Administration shall be collected by the Administration or by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 7(a) of this Act [15 USCS § 636(a)]: *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) [(h)(1)(B)].

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

(C) The Administration may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under section 7(a)(23) [*15 USCS § 636(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.

(5)

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

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

(6) If the amount of the guaranteed portion of any loan under section 7(a) [*15 USCS § 636(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) Central registration of loans and trust certificates; contracts with agent; disclosures by sellers of guaranteed portions of loans; regulation of brokers and dealers; electronic registration.

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

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

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

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

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

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

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

(i) 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 decisions of the Administrator—

(I) for which Congress requires a hearing on the record; or

(II) that the Administrator designates for hearing by regulation; and

(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) 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) [*15 USCS § 633(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 operation 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.

(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).

(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 [*5 USCS § 554*];

(ii) a Hearing Officer shall have the powers described in section 556(c) of such title [*5 USCS § 556(c)*] ; and

(iii) the relevant provisions of subchapter II of chapter 5 of such title [*5 USCS §§ 551* et seq.] (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 R*egulations) on the effective date of this subsection [enacted Nov. 25, 2015] shall be considered as qualified to be, and redesignated as, a Hearing Officer.

(4) Determinations regarding status of concerns.

(A) In general. Not later than 2 days after the date on which a final determination that a business concern does not meet the requirements of the status such concern claims to hold is made, such concern or the Administrator, as applicable, shall update the status of such concern in the System for Award Management (or any successor system).

(B) Administrator updates. If such concern fails to update the status of such concern as described in subparagraph (A), not later than 2 days after such failure the Administrator shall make such update.

(C) Notification. A concern required to make an update described under subparagraph (A) shall notify a contracting officer for each contract with respect to which such concern has an offer or bid pending of the determination made under subparagraph (A), if the concern finds, in good faith, that such determination affects the eligibility of the concern to perform such a contract.

(5) 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.

History

HISTORY:

July 18, 1958, *P. L. 85-536*, § 2 [5], *72 Stat. 385*; Sept. 26, 1961, *P. L. 87-305*, § 4, *75 Stat. 666*; Oct. 4, 1961, *P. L. 87-367*, Title I, § 103(3), *75 Stat. 787*; June 6, 1972, *P. L. 92-310*, Title II, Part 2, § 224(a), *86 Stat. 206*; Aug. 23, 1974, *P. L. 93-386*, §§ 3(1), 10, *88 Stat. 745*, 749; June 4, 1976, *P. L. 94-305*, Title II, § 208, *90 Stat. 671*; Aug. 4, 1977, *P. L. 95-89*, Title III, § 303, *91 Stat. 558*; Oct. 24, 1978, *P. L. 95-510*, § 103, *92 Stat. 1781*; July 2, 1980, *P. L. 96-302*, Title I, Part B, § 114, *94 Stat. 838*; July 10, 1984, *P. L. 98-352*, § 2, *98 Stat. 329*; Nov. 3, 1988, *P. L. 100-590*, Title I, § 113, *102 Stat. 2997*; Oct. 28, 1991, *P. L. 102-140*, Title VI, § 609(a), *105 Stat. 825*; Oct. 28, 1992, *P. L. 102-564*, Title III, § 307(d), *106 Stat. 4264*; Aug. 13, 1993, *P. L. 103-81*, § 3(a), *107 Stat. 781*; July 22, 1994, *P. L. 103-282*, § 2, *108 Stat. 1422*; Oct. 22, 1994, *P. L. 103-403*, Title VI, § 602, *108 Stat. 4202*; Oct. 12, 1995, *P. L. 104-36*, § 4(b), *109 Stat. 297*; Sept. 30, 1996, *P. L. 104-208*, Div D, Title I, § 103(e), Title II, §§ 205(a), 208(i), *110 Stat. 3009*-727, 3009-738, 3009-747; Dec. 21, 2000, *P. L. 106-554*, § 1(a)(9), *114 Stat. 2763*; Sept. 24, 2004, *P. L. 108-306*, § 3, *118 Stat. 1131*; Dec. 8, 2004, *P. L. 108-447*, Div K, Title I, Subtitle C, § 131, *118 Stat. 3452*; Sept. 27, 2010, *P. L. 111-240*, Title I, Subtitle A, Part I, § 1117, *124 Stat. 2509*; Nov. 25, 2015, *P. L. 114-92*, Div A, Title VIII, Subtitle F, § 869(a)(1), *129 Stat. 936*; Dec. 23, 2016, *P. L. 114-328*, Div A, Title XVIII, Subtitle D, § 1833(a), *130 Stat. 2661*; Aug. 13, 2018, *P.L. 115-232*, Div A, Title VIII, Subtitle F, § 862(b)(2), *132 Stat. 1898*; Dec. 27, 2021, *P.L. 117-81*, Div A, Title VIII, Subtitle G, § 863, *135 Stat. 1852*.

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§ 636. Additional powers [Caution: See prospective amendment note below.]

(a) 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, 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.

(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. 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.

(ii) 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. Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958 [*15 USCS § 697*], 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.

(C) Lending limits of lenders. On and after October 1, 2015, the Administrator may not guarantee a loan under this subsection if the sole purpose for requesting the guarantee is to allow the lender to exceed the legal lending limit of the lender.

(2) Level of participation in guaranteed loans.

(A) In general. Except as provided in subparagraphs (B), (D), (E), and (F), 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—

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

(ii) 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 $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) 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.

(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) [*15 USCS § 634(b)(7)*], 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) complete authority to service and liquidate such loans 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) Participation under Export Working Capital Program. In 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) 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.

(F) Participation in the paycheck protection program. In an agreement to participate in a loan on a deferred basis under paragraph (36), the participation by the Administration shall be 100 percent.

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

(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), 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 (or if the gross loan amount would exceed $5,000,000), of which not more than $4,000,000 may be used for working capital, supplies, or financings under section 7(a)(14) [subsec. (a)(14) of this section] 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 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: *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.

(B) 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) Applicability. Clauses (i) and (ii) shall not apply to loans made on or after October 1, 2000.

(C) 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—

(I) 5 percent of the amount of prepayment, if the borrower prepays 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.

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

(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;

(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 [.]

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.

(7)

(A) In general .The Administrator may defer payments on the principal and interest 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.

(B) Deferral requirements. With respect to a deferral provided under this paragraph, the Administrator may allow lenders under this subsection—

(i) to provide full payment deferment relief (including payment of principal and interest) for a period of not more than 1 year; and

(ii) to provide an additional deferment period if the borrower provides documentation justifying such additional deferment.

(C) Secondary market.

(i) In general. Except as provided in clause (ii), if an investor declines to approve a deferral or additional deferment requested by a lender under subparagraph (B), the Administrator shall exercise the authority to purchase the loan so that the borrower may receive full payment deferment relief (including payment of principal and interest) or an additional deferment as described in subparagraph (B).

(ii) Exception. If, in a fiscal year, the Administrator determines that the cost of implementing clause (i) is greater than zero, the Administrator shall not implement that clause.

(8) 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*).

(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.

(10) The Administration may provide guaranteed 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.

(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.

(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.

[(B)](b) 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 [*15 USCS § 694-1*]. 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.

(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 [*15 USCS §§ 695* et seq.].

(14) Export Working Capital Program.

(A) In general. The Administrator may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and 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 such financings as may be legal and reasonable.

(B) 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.

(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 Administrator shall aggressively market its export financing program to small businesses.

(15)

(A) 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, 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) 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 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* [*26 USCS § 401(a)*]), 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,

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

(iv) 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.

(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—

(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)*), including the number of financings made—

(I) to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(II) to cooperatives; and

(iii) any outreach and educational activities conducted by the Administration with respect to employee-owned business concerns.

(F) 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) International trade.

(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—

(i) 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;

(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; or

(iii) 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) 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.

(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.

(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 [*19 USCS §§ 2341* et seq.].

(F) 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.

(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, 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.

(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).

(19)

(A) In addition to the Preferred Lenders Program authorized by the proviso in section 5(b)(7) [*15 USCS § 634(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.

(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, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

(C) Authority to 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)

(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) [*15 USCS § 637(a)*]. Such assistance may be provided only if the Administration determines that—

(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.

(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 is 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)

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

(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 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

(iii) 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) 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—

(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) 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) Yearly fee.

(A) 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 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 fee assessed under subparagraph (A) shall be payable by the participating lender and shall not be charged to the borrower.

(C) 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 [enacted Dec. 8, 2004].

(24) 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.

(25) Limitation on conducting pilot projects.

(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.

(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.

(26) 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 [2 USCS § 661a]) to the Administration of purchasing and guaranteeing loans under this Act.

(27) [Repealed]

(28) 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.

(29) 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—

(A) In general. 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—

(i) shall be required by the Administration in connection with any such loan, if such loan is in an amount greater than the Federal banking regulator appraisal threshold; or

(ii) may be required by the Administration or the lender in connection with any such loan, if such loan is in an amount equal to or less than the Federal banking regulator appraisal threshold, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(B) Federal banking regulator appraisal threshold defined. For purposes of this paragraph, the term "Federal banking regulator appraisal threshold" means the lesser of the threshold amounts set by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation for when a federally related transaction that is a commercial real estate transaction requires an appraisal prepared by a State licensed or certified appraiser.

(30) 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.

(31) Express loans.

(A) Definitions. As used in this paragraph:

(i) 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.

(ii) The term “express lender” means any lender authorized by the Administration to participate in the Express Loan Program.

(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.

(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 guarantee rate of not more than 50 percent.

(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 $500,000.

(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) Express loans for renewable energy and energy efficiency.

(i) Definitions. In this subparagraph—

(I) the term “biomass”—

(aa) means any organic material that is available on a renewable or recurring basis, including—

(AA) agricultural crops;

(BB) trees grown for energy production;

(CC) wood waste and wood residues;

(DD) plants (including aquatic plants and grasses);

(EE) residues;

(FF) fibers;

(GG) animal wastes and other waste materials; and

(HH) fats, oils, and greases (including recycled fats, oils, and greases); and

(bb) does not include—

(AA) paper that is commonly recycled; or

(BB) unsegregated solid waste;

(II) the term “energy efficiency project” means the installation or upgrading of equipment that results in a significant reduction in energy usage; and

(III) the term “renewable energy system” means a system of energy derived from—

(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) 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) Definition. In this subparagraph, the term "veteran or spouse of a veteran" means—

(I) a veteran, as defined in section 3(q)(4) [*15 USCS § 632(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*;

(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).

(iii) [Redesignated]

(H) 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.

(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 [enacted Nov. 25, 2015], the Administrator shall promulgate rules to carry out this subparagraph.

(32) 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*);

(ii) the term "covered energy efficiency loan" means a 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)[.]

(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.

(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) 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*);

(ii) the term "pilot program" means the pilot program established under subparagraph (B); and

(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.

(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.

(D) Maximum participation. A veteran participation 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 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 for 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) 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;

(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.

(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

(II) 75 percent of a loan that is more than $350,000 and not more than $500,000.

(35) 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 regulation.

(B) Authority. The Administration shall guarantee loans made to a cooperative for the purpose described in paragraph (15).

(36) Paycheck protection program.

(A) Definitions. In this paragraph—

(i) the terms “appropriate Federal banking agency” and “insured depository institution” have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (*12 U.S.C. 1813*);

(ii) the term “covered loan” means a loan made under this paragraph during the covered period;

(iii) the term “covered period” means the period beginning on February 15, 2020 and ending on June 30, 2021;

(iv) the term “eligible recipient” means an individual or entity that is eligible to receive a covered loan;

(v) the term “eligible self-employed individual” has the meaning given the term in section 7002(b) of the Families First Coronavirus Response Act (*Public Law 116-127*) [*26 USCS § 1401* note];

(vi) the term “insured credit union” has the meaning given the term in section 101 of the Federal Credit Union Act (*12 U.S.C. 1752*);

(vii) the term “nonprofit organization” means an organization that is described in *section 501(c)(3) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)(3)*] and that is exempt from taxation under section 501(a) of such Code [*26 USCS § 501(a)*];

(viii) the term “payroll costs”—

(I) means—

(aa) the sum of payments of any compensation with respect to employees that is a—

(AA) salary, wage, commission, or similar compensation;

(BB) payment of cash tip or equivalent;

(CC) payment for vacation, parental, family, medical, or sick leave;

(DD) allowance for dismissal or separation;

(EE) payment required for the provisions of group health care or group life, disability, vision, or dental insurance benefits, including insurance premiums;

(FF) payment of any retirement benefit; or

(GG) payment of State or local tax assessed on the compensation of employees; and

(bb) the sum of payments of any compensation to or income of a sole proprietor or independent contractor that is a wage, commission, income, net earnings from self-employment, or similar compensation and that is in an amount that is not more than $100,000 on an annualized basis, as prorated for the period during which the payments are made or the obligation to make the payments is incurred; and

(II) shall not include—

(aa) the compensation of an individual employee in excess of $100,000 on an annualized basis, as prorated for the period during which the compensation is paid or the obligation to pay the compensation is incurred;

(bb) taxes imposed or withheld under chapters 21, 22, or 24 of the Internal Revenue Code of 1986 [26 USCS §§ 3101 et seq., §§ 3201 et seq. or §§ 3401 et seq.] during the applicable period;

(cc) any compensation of an employee whose principal place of residence is outside of the United States;

(dd) qualified sick leave wages for which a credit is allowed under section 7001 of the Families First Coronavirus Response Act (*Public Law 116-127*) [26 USCS § 3111 note]; or

(ee) qualified family leave wages for which a credit is allowed under section 7003 of the Families First Coronavirus Response Act (*Public Law 116-127*) [26 USCS § 3111 note];

(ix) the term "veterans organization" means an organization that is described in *section 501(c)(19) of the Internal Revenue Code* [26 USCS § 501(c)(19)] that is exempt from taxation under section 501(a) of such Code [26 USCS § 501(a)];

(x) the term "community development financial institution" has the meaning given the term in section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702)[)];

(xi) the term "community financial institutions" means—

(I) a community development financial institution;

(II) a minority depository institution, as defined in section 308 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1463 note);

(III) a development company that is certified under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.); and

(IV) an intermediary, as defined in section 7(m)(11) [15 USCS § 636(m)(11)];

(xii) the term "credit union" means a State credit union or a Federal credit union, as those terms are defined, respectively, in section 101 of the Federal Credit Union Act (12 U.S.C. 1752);

(xiii) the term "seasonal employer" means an eligible recipient that—

(I) does not operate for more than 7 months in any calendar year; or

(II) during the preceding calendar year, had gross receipts for any 6 months of that year that were not more than 33.33 percent of the gross receipts of the employer for the other 6 months of that year;

(xiv) the term "housing cooperative" means a cooperative housing corporation (as defined in *section 216(b) of the Internal Revenue Code of 1986* [*26 USCS § 216(b)*]) that employs not more than 300 employees;

(xv) the term "destination marketing organization" means a nonprofit entity that is—

(I) an organization described in *section 501(c) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)*] and exempt from tax under section 501(a) of such Code [*26 USCS § 501(a)*]; or

(II) a State, or a political subdivision of a State (including any instrumentality of such entities)—

(aa) engaged in marketing and promoting communities and facilities to businesses and leisure travelers through a range of activities, including—

(AA) assisting with the location of meeting and convention sites;

(BB) providing travel information on area attractions, lodging accommodations, and restaurants;

(CC) providing maps; and

(DD) organizing group tours of local historical, recreational, and cultural attractions; or

(bb) that is engaged in, and derives the majority of the operating budget of the entity from revenue attributable to, providing live events;

(xvi) the terms "exchange", "issuer", and "security" have the meanings given those terms in section 3(a) of the Securities Exchange Act of 1934 (*15 U.S.C. 78c(a)*); and

(xvii) the term "additional covered nonprofit entity"—

(I) means an organization described in any paragraph of *section 501(c) of the Internal Revenue Code of 1986* [*26 USCS § 501(c)*], other than paragraph (3), (4), (6), or (19), and exempt from tax under section 501(a) of such Code [*26 USCS § 501(a)*]; and

(II) does not include any entity that, if the entity were a business concern, would be described in *section 120.110 of title 13, Code of Federal R*egulations (or in any successor regulation or other related guidance or rule that may be issued by the Administrator) other than a business concern described in paragraph (a) or (k) of such section.

(B) Paycheck protection loans. Except as otherwise provided in this paragraph, the Administrator may guarantee covered loans under the same terms, conditions, and processes as a loan made under this subsection.

(C) Registration of loans. Not later than 15 days after the date on which a loan is made under this paragraph, the Administration shall register the loan using the TIN (as defined in *section 7701 of the Internal Revenue Code of 1986* [*26 USCS § 7701*]) assigned to the borrower.

(D) Increased eligibility for certain small businesses and organizations.

(i) In general. During the covered period, in addition to small business concerns, any business concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern described in section 31(b)(2)(C) [*15 USCS § 657a(b)(2)(C)*] shall be eligible to receive a covered loan if the business concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern employs not more than the greater of—

(I) 500 employees; or

(II) if applicable, the size standard in number of employees established by the Administration for the industry in which the business concern, nonprofit organization, housing cooperative, veterans organization, or Tribal business concern operates.

(ii) Inclusion of sole proprietors, independent contractors, and eligible self-employed individuals.

(I) In general. During the covered period, individuals who operate under a sole proprietorship or as an independent contractor and eligible self-employed individuals shall be eligible to receive a covered loan.

(II) Documentation. An eligible self-employed individual, independent contractor, or sole proprietorship seeking a covered loan shall submit such documentation as determined necessary by the Administrator and the Secretary, to establish the applicant as eligible.

(iii) Business concerns with more than 1 physical location.

(I) In general. During the covered period, any business concern that employs not more than 500 employees per physical location of the business concern and that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursal shall be eligible to receive a covered loan.

(II) Eligibility of news organizations.

(aa) Definition. In this subclause, the term "included business concern" means a business concern, including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (*47 U.S.C. 301* et seq.) without regard for whether such a station is a concern as defined in *section 121.105 of title 13, Code of Federal R*egulations, or any successor thereto—

(AA) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern; or

(BB) any nonprofit organization or any organization otherwise subject to *section 511(a)(2)(B) of the Internal Revenue Code of 1986* [*26 USCS § 511(a)(2)(B)*] that is a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (*47 U.S.C. 397(11)*)).

(bb) Eligibility. During the covered period, an included business concern shall be eligible to receive a covered loan if—

(AA) the included business concern is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151 or, with respect to a public broadcasting entity (as defined in section 397(11) of the Communications Act of 1934 (*47 U.S.C. 397(11)*)), has a trade or business that falls under such a code; and

(BB) the included business concern makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the included business concern that produces or distributes locally focused or emergency information.

(III) Eligibility of certain organizations. Subject to the provisions in this subparagraph, during the covered period—

(aa) a nonprofit organization shall be eligible to receive a covered loan if the nonprofit organization employs not more than 500 employees per physical location of the organization; and

(bb) an additional covered nonprofit entity and an organization that, but for subclauses (I)(dd) and (II)(dd) of clause (vii), would be eligible for a covered loan under clause (vii) shall be eligible to receive a covered loan if the entity or organization employs not more than 300 employees per physical location of the entity or organization.

(IV) Eligibility of internet publishing organizations. A business concern or other organization that was not eligible to receive a covered loan the day before the date of enactment of this subclause [enacted March 11, 2021], is assigned a North American Industry Classification System code of 519130, certifies in good faith as an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information shall be eligible to receive a covered loan for the continued provision of news, information, content, or emergency information if—

(aa) the business concern or organization employs not more than 500 employees, or the size standard established by the Administrator for that North American Industry Classification code, per physical location of the business concern or organization; and

(bb) the business concern or organization makes a good faith certification that proceeds of the loan will be used to support expenses at the component of the business concern or organization that supports local or regional news.

(iv) Waiver of affiliation rules. During the covered period, the provisions applicable to affiliations under section 121.103 of title 13, Code of Federal Regulations, or any successor regulation, are waived with respect to eligibility for a covered loan for—

(I) any business concern with not more than 500 employees that, as of the date on which the covered loan is disbursed, is assigned a North American Industry Classification System code beginning with 72;

(II) any business concern operating as a franchise that is assigned a franchise identifier code by the Administration;

(III) any business concern that receives financial assistance from a company licensed under section 301 of the Small Business Investment Act of 1958 (15 U.S.C. 681);

(IV)

(aa) any business concern (including any station which broadcasts pursuant to a license granted by the Federal Communications Commission under title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) without regard for whether such a station is a concern as defined in section 121.105 of title 13, Code of Federal Regulations, or any successor thereto) that employs not more than 500 employees, or the size standard established by the Administrator for the North American Industry Classification System code applicable to the business concern, per physical location of such business concern and is majority owned or controlled by a business concern that is assigned a North American Industry Classification System code beginning with 511110 or 5151; or

(bb) any nonprofit organization that is assigned a North American Industry Classification System code beginning with 5151; and

(V) any business concern or other organization that was not eligible to receive a covered loan the day before the date of enactment of this subclause [enacted March 11, 2021], is assigned a North American Industry Classification System code of 519130, certifies in good faith as an Internet-only news publisher or Internet-only periodical publisher, and is engaged in the collection and distribution of local or regional and national news and information, if the business concern or organization—

(aa) employs not more than 500 employees, or the size standard established by the Administrator for that North American Industry Classification code, per physical location of the business concern or organization; and

(bb) is majority owned or controlled by a business concern or organization that is assigned a North American Industry Classification System code of 519130.

(v) Employee. For purposes of determining whether a business concern, nonprofit organization, veterans organization, or Tribal business concern described in section 31(b)(2)(C) employs not more than 500 employees under clause (i)(I), or for purposes of determining the number of employees of a housing cooperative or a business concern or organization made eligible for a loan under this paragraph under subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix), the term “employee” includes individuals employed on a full-time, part-time, or other basis.

(vi) Affiliation. The provisions applicable to affiliations under *section 121.103 of title 13, Code of Federal R*egulations, or any successor thereto, shall apply with respect to a nonprofit organization, a business concern or organization made eligible for a loan under this paragraph under clause (vii), a housing cooperative, and a veterans organization in the same manner as with respect to a small business concern.

(vii) Eligibility for certain 501(c)(6) organizations.

(I) In general. Any organization that is described in *section 501(c)(6) of the Internal Revenue Code* [*26 USCS § 501(c)(6)*] and that is exempt from taxation under section 501(a) of such Code [*26 USCS § 501(a)*] (excluding professional sports leagues and organizations with the purpose of promoting or participating in a political campaign or other activity) shall be eligible to receive a covered loan if—

(aa) the organization does not receive more than 15 percent of its receipts from lobbying activities;

(bb) the lobbying activities of the organization do not comprise more than 15 percent of the total activities of the organization;

(cc) the cost of the lobbying activities of the organization did not exceed $1,000,000 during the most recent tax year of the organization that ended prior to February 15, 2020; and

(dd) the organization employs not more than 300 employees.

(II) Destination marketing organizations. Any destination marketing organization shall be eligible to receive a covered loan if—

(aa) the destination marketing organization does not receive more than 15 percent of its receipts from lobbying activities;

(bb) the lobbying activities of the destination marketing organization do not comprise more than 15 percent of the total activities of the organization;

(cc) the cost of the lobbying activities of the destination marketing organization did not exceed $1,000,000 during the most recent tax year of the destination marketing organization that ended prior to February 15, 2020; and

(dd) the destination marketing organization employs not more than 300 employees; and

(ee) the destination marketing organization—

(AA) is described in *section 501(c) of the Internal Revenue Code* [*26 USCS § 501(c)*] and is exempt from taxation under section 501(a) of such Code [*26 USCS § 501(a)*]; or

(BB) is a quasi-governmental entity or is a political subdivision of a State or local government, including any instrumentality of those entities.

(viii) Ineligibility of publicly-traded entities.

(I) In general. Subject to subclause (II), and notwithstanding any other provision of this paragraph, on and after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act [enacted Dec. 27, 2020], an entity that is an issuer, the securities of which are listed on an exchange registered as a national securities exchange under section 6 of the Securities Exchange Act of 1934 (*15 U.S.C. 78f*), shall be ineligible to receive a covered loan under this paragraph.

(II) Rule for affiliated entities. With respect to a business concern or organization made eligible by subclause (II) or (IV) of clause (iii) or subclause (IV) or (V) of clause (iv) of this subparagraph, the Administrator shall not consider whether any affiliated entity, which for purposes of this subclause shall include any entity that owns or controls such business concern or organization, is an issuer.

(ix) Eligibility of additional covered nonprofit entities. An additional covered nonprofit entity shall be eligible to receive a covered loan if—

(I) the additional covered nonprofit entity does not receive more than 15 percent of its receipts from lobbying activities;

(II) the lobbying activities of the additional covered nonprofit entity do not comprise more than 15 percent of the total activities of the organization;

(III) the cost of the lobbying activities of the additional covered nonprofit entity did not exceed $1,000,000 during the most recent tax year of the additional covered nonprofit entity that ended prior to February 15, 2020; and

(IV) the additional covered nonprofit entity employs not more than 300 employees.

(E) Maximum loan amount. Except as provided in subparagraph (V), during the covered period, with respect to a covered loan, the maximum loan amount shall be the lesser of—

(i)

(I) the sum of—

(aa) the product obtained by multiplying—

(AA) the average total monthly payments by the applicant for payroll costs incurred during the 1-year period before the date on which the loan is made, except that an applicant that is a seasonal employer shall use the average total monthly payments for payroll for any 12-week period selected by the seasonal employer between February 15, 2019, and February 15, 2020; by

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan; or

(II) if requested by an otherwise eligible recipient that was not in business during the period beginning on February 15, 2019 and ending on June 30, 2019, the sum of—

(aa) the product obtained by multiplying—

(AA) the average total monthly payments by the applicant for payroll costs incurred during the period beginning on January 1, 2020 and ending on February 29, 2020; by

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available to be refinanced under the covered loan; or

(ii) $10,000,000.

(F) Allowable uses of covered loans.

(i) In general. During the covered period, an eligible recipient may, in addition to the allowable uses of a loan made under this subsection, use the proceeds of the covered loan for—

(I) payroll costs;

(II) costs related to the continuation of group health care benefits during periods of paid sick, medical, or family leave, and insurance premiums;

(III) employee salaries, commissions, or similar compensations;

(IV) payments of interest on any mortgage obligation (which shall not include any prepayment of or payment of principal on a mortgage obligation);

(V) rent (including rent under a lease agreement);

(VI) utilities;

(VII) interest on any other debt obligations that were incurred before the covered period;

(VIII) covered operations expenditures, as defined in section 7A(a) [*15 USCS § 636m(a)*];

(IX) covered property damage costs, as defined in section 7A(a) [*15 USCS § 636m(a)*];

(X) covered supplier costs, as defined in section 7A(a) [*15 USCS § 636m(a)*]; and

(XI) covered worker protection expenditures, as defined in section 7A(a) [*15 USCS § 636m(a)*].

(ii) Delegated authority.

(I) In general. For purposes of making covered loans for the purposes described in clause (i), a lender approved to make loans under this subsection shall be deemed to have been delegated authority by the Administrator to make and approve covered loans, subject to the provisions of this paragraph.

(II) Considerations. In evaluating the eligibility of a borrower for a covered loan with the terms described in this paragraph, a lender shall consider whether the borrower—

(aa) was in operation on February 15, 2020; and

(bb)

(AA) had employees for whom the borrower paid salaries and payroll taxes; or

(BB) paid independent contractors, as reported on a Form 1099-MISC.

(iii) Additional lenders. The authority to make loans under this paragraph shall be extended to additional lenders determined by the Administrator and the Secretary of the Treasury to have the necessary qualifications to process, close, disburse and service loans made with the guarantee of the Administration.

(iv) Refinance. A loan made under subsection (b)(2) during the period beginning on January 31, 2020 and ending on the date on which covered loans are made available may be refinanced as part of a covered loan.

(v) Nonrecourse. Notwithstanding the waiver of the personal guarantee requirement or collateral under subparagraph (J), the Administrator shall have no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to the extent that such shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized under clause (i) or (iv).

(vi) Prohibition. None of the proceeds of a covered loan may be used for—

(I) lobbying activities, as defined in section 3 of the Lobbying Disclosure Act of 1995 (*2 U.S.C. 1602*);

(II) lobbying expenditures related to a State or local election; or

(III) expenditures designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before Congress or any State government, State legislature, or local legislature or legislative body.

(G) Borrower requirements.

(i) Certification. An eligible recipient applying for a covered loan shall make a good faith certification—

(I) that the uncertainty of current economic conditions makes necessary the loan request to support the ongoing operations of the eligible recipient;

(II) acknowledging that funds will be used to retain workers and maintain payroll or make mortgage payments, lease payments, and utility payments;

(III) that the eligible recipient does not have an application pending for a loan under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan; and

(IV) during the period beginning on February 15, 2020 and ending on December 31, 2020, that the eligible recipient has not received amounts under this subsection for the same purpose and duplicative of amounts applied for or received under a covered loan.

(H) Fee waiver. With respect to a covered loan—

(i) in lieu of the fee otherwise applicable under paragraph (23)(A), the Administrator shall collect no fee; and

(ii) in lieu of the fee otherwise applicable under paragraph (18)(A), the Administrator shall collect no fee.

(I) Credit elsewhere. During the covered period, the requirement that a small business concern is unable to obtain credit elsewhere, as defined in section 3(h) [*15 USCS § 632(h)*], shall not apply to a covered loan.

(J) Waiver of personal guarantee requirement. With respect to a covered loan—

(i) no personal guarantee shall be required for the covered loan; and

(ii) no collateral shall be required for the covered loan.

(K) Maturity for loans with remaining balance after application of forgiveness. With respect to a covered loan that has a remaining balance after reduction based on the loan forgiveness amount under section 7A [*15 USCS § 636m*]—

(i) the remaining balance shall continue to be guaranteed by the Administration under this subsection; and

(ii) the covered loan shall have a minimum maturity of 5 years and a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness under that section.

(L) Interest rate requirements. A covered loan shall bear an interest rate not to exceed 4 percent, calculated on a non-compounding, non-adjustable basis.

(M) Loan deferment.

(i) Definition of impacted borrower.

(I) In general. In this subparagraph, the term “impacted borrower” means an eligible recipient that—

(aa) is in operation on February 15, 2020; and

(bb) has an application for a covered loan that is approved or pending approval on or after the date of enactment of this paragraph [enacted March 27, 2020].

(II) Presumption. For purposes of this subparagraph, an impacted borrower is presumed to have been adversely impacted by COVID-19.

(ii) Deferral. The Administrator shall—

(I) consider each eligible recipient that applies for a covered loan to be an impacted borrower; and

(II) require lenders under this subsection to provide complete payment deferment relief for impacted borrowers with covered loans, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 7A [*15 USCS § 636m*] is remitted to the lender.

(iii) Secondary market. With respect to a covered loan that is sold on the secondary market, if an investor declines to approve a deferral requested by a lender under clause (ii), the Administrator shall exercise the authority to purchase the loan so that the impacted borrower may receive a deferral, including payment of principal, interest, and fees, until the date on which the amount of forgiveness determined under section 7A [*15 USCS § 636m*] is remitted to the lender.

(iv) Guidance. Not later than 30 days after the date of enactment of this paragraph [enacted March 27, 2020], the Administrator shall provide guidance to lenders under this paragraph on the deferment process described in this subparagraph.

(v) Rule of construction. If an eligible recipient fails to apply for forgiveness of a covered loan within 10 months after the last day of the covered period defined in section 7A(a) [*15 USCS § 636m(a)*], such eligible recipient shall make payments of principal, interest, and fees on such covered loan beginning on the day that is not earlier than the date that is 10 months after the last day of such covered period.

(N) Secondary market sales. A covered loan shall be eligible to be sold in the secondary market consistent with this subsection. The Administrator may not collect any fee for any guarantee sold into the secondary market under this subparagraph.

(O) Regulatory capital requirements.

(i) Risk weight. With respect to the appropriate Federal banking agencies or the National Credit Union Administration Board applying capital requirements under their respective risk-based capital requirements, a covered loan shall receive a risk weight of zero percent.

(ii) Temporary relief from tdr disclosures. Notwithstanding any other provision of law, an insured depository institution or an insured credit union that modifies a covered loan in relation to COVID-19-related difficulties in a troubled debt restructuring on or after March 13, 2020, shall not be required to comply with the Financial Accounting Standards Board Accounting Standards Codification Subtopic 310-40 ("Receivables - Troubled Debt Restructurings by Creditors") for purposes of compliance with the requirements of the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.), until such time and under such circumstances as the appropriate Federal banking agency or the National Credit Union Administration Board, as applicable, determines appropriate.

(P) Reimbursement for processing.

(i) In general. The Administrator shall reimburse a lender authorized to make a covered loan as follows:

(I) With respect to a covered loan made during the period beginning on the date of enactment of this paragraph [enacted March 27, 2020] and ending on the day before the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act [enacted Dec. 27, 2020], the Administrator shall reimburse such a lender at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

(aa) 5 percent for loans of not more than $350,000;

(bb) 3 percent for loans of more than $350,000 and less than $2,000,000; and

(cc) 1 percent for loans of not less than $2,000,000.

(II) With respect to a covered loan made on or after the date of enactment of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act [enacted Dec. 27, 2020], the Administrator shall reimburse such a lender—

(aa) for a covered loan of not more than $50,000, in an amount equal to the lesser of—

(AA) 50 percent of the balance of the financing outstanding at the time of disbursement of the covered loan; or

(BB) $2,500; and

(bb) at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

(AA) 5 percent for a covered loan of more than $50,000 and not more than $350,000;

(BB) 3 percent for a covered loan of more than $350,000 and less than $2,000,000; and

(CC) 1 percent for a covered loan of not less than $2,000,000.

(ii) Fee limits. An agent that assists an eligible recipient to prepare an application for a covered loan may not collect a fee in excess of the limits established by the Administrator. If an eligible recipient has knowingly retained an agent, such fees shall be paid by the eligible recipient and may not be paid out of the proceeds of a covered loan. A lender shall only be responsible for paying fees to an agent for services for which the lender directly contracts with the agent.

(iii) Timing. A reimbursement described in clause (i) shall be made not later than 5 days after the reported disbursement of the covered loan and may not be required to be repaid by a lender unless the lender is found guilty of an act of fraud in connection with the covered loan.

(iv) Sense of the Senate. It is the sense of the Senate that the Administrator should issue guidance to lenders and agents to ensure that the processing and disbursement of covered loans prioritizes small business concerns and entities in underserved and rural markets, including veterans and members of the military community, small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 8(d)(3)(C) [*15 USCS § 637(d)(3)(C)*]), women, and businesses in operation for less than 2 years.

(Q) Duplication. Nothing in this paragraph shall prohibit a recipient of an economic injury disaster loan made under subsection (b)(2) that is for a purpose other than paying payroll costs and other obligations described in subparagraph (F) from receiving assistance under this paragraph.

(R) Waiver of prepayment penalty. Notwithstanding any other provision of law, there shall be no prepayment penalty for any payment made on a covered loan.

(S) Set-aside for insured depository institutions, credit unions, and community financial institutions.

(i) Insured depository institutions and credit unions. In making loan guarantees under this paragraph after the date of enactment of this clause [enacted April 24, 2020], the Administrator shall guarantee not less than $30,000,000,000 in loans made by—

(I) insured depository institutions with consolidated assets of not less than $10,000,000,000 and less than $50,000,000,000; and

(II) credit unions with consolidated assets of not less than $10,000,000,000 and less than $50,000,000,000.

(ii) Community financial institutions, small insured depository institutions, and credit unions. In making loan guarantees under this paragraph after the date of enactment of this clause [enacted April 24, 2020], the Administrator shall guarantee not less than $30,000,000,000 in loans made by—

(I) community financial institutions;

(II) insured depository institutions with consolidated assets of less than $10,000,000,000; and

(III) credit unions with consolidated assets of less than $10,000,000,000.

(T) Requirement for date in operation. A business or organization that was not in operation on February 15, 2020 shall not be eligible for a loan under this paragraph.

(U) Exclusion of entities receiving shuttered venue operator grants. An eligible person or entity (as defined under of section 24 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act [*15 USCS § 9009a*]) that receives a grant under such section 24 [*15 USCS § 9009a*] shall not be eligible for a loan under this paragraph.

(V) Calculation of maximum loan amount for farmers and ranchers.

(i) Definition. In this subparagraph, the term "covered recipient" means an eligible recipient that—

(I) operates as a sole proprietorship or as an independent contractor, or is an eligible self-employed individual;

(II) reports farm income or expenses on a Schedule F (or any equivalent successor schedule); and

(III) was in business as of February 15, 2020.

(ii) No employees. With respect to covered recipient without employees, the maximum covered loan amount shall be the lesser of—

(I) the sum of—

(aa) the product obtained by multiplying—

(AA) the gross income of the covered recipient in 2019, as reported on a Schedule F (or any equivalent successor schedule), that is not more than $100,000, divided by 12; and

(BB) 2.5; and

(bb) the outstanding amount of a loan under subsection (b)(2) that was made during the period beginning on January 31, 2020 and ending on April 3, 2020 that the borrower intends to refinance under the covered loan, not including any amount of any advance under the loan that is not required to be repaid; or

(II) $2,000,000.

(iii) With employees. With respect to a covered recipient with employees, the maximum covered loan amount shall be calculated using the formula described in subparagraph (E), except that the gross income of the covered recipient described in clause (ii)(I)(aa)(AA) of this subparagraph, as divided by 12, shall be added to the sum calculated under subparagraph (E)(i)(I).

(iv) Recalculation. A lender that made a covered loan to a covered recipient before the date of enactment of this subparagraph [enacted Dec. 27, 2020] may, at the request of the covered recipient—

(I) recalculate the maximum loan amount applicable to that covered loan based on the formula described in clause (ii) or (iii), as applicable, if doing so would result in a larger covered loan amount; and

(II) provide the covered recipient with additional covered loan amounts based on that recalculation.

(37) Paycheck protection program second draw loans.

(A) Definitions. In this paragraph—

(i) the terms “additional covered nonprofit entity”, “eligible self-employed individual”, “housing cooperative”, “nonprofit organization”, “payroll costs”, “seasonal employer”, and “veterans organization” have the meanings given those terms in paragraph (36), except that “eligible entity” shall be substituted for “eligible recipient” each place it appears in the definitions of those terms;

(ii) the term “covered loan” means a loan made under this paragraph;

(iii) the terms “covered mortgage obligation”, “covered operating expenditure”, “covered property damage cost”, “covered rent obligation”, “covered supplier cost”, “covered utility payment”, and “covered worker protection expenditure” have the meanings given those terms in section 7A(a) [*15 USCS § 636m(a)*];

(iv) the term “eligible entity”—

(I) means any business concern, nonprofit organization, housing cooperative, veterans organization, Tribal business concern, eligible self-employed individual, sole proprietor, independent contractor, or small agricultural cooperative that—

(aa) employs not more than 300 employees; and

(bb)

(AA) except as provided in subitems (BB), (CC), and (DD), had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter in 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the same quarter in 2019;

(BB) if the entity was not in business during the first or second quarter of 2019, but was in business during the third and fourth quarter of 2019, had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the third or fourth quarter of 2019;

(CC) if the entity was not in business during the first, second, or third quarter of 2019, but was in business during the fourth quarter of 2019, had gross receipts during the first, second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the fourth quarter of 2019; or

(DD) if the entity was not in business during 2019, but was in operation on February 15, 2020, had gross receipts during the second, third, or, only with respect to an application submitted on or after January 1, 2021, fourth quarter of 2020 that demonstrate not less than a 25 percent reduction from the gross receipts of the entity during the first quarter of 2020;

(II) includes a business concern or organization made eligible for a loan under paragraph (36) under subclause (II), (III), or (IV) of clause (iii), subclause (IV) or (V) of clause (iv), clause (vii), or clause (ix) of subparagraph (D) of paragraph (36) and that meets the requirements described in items (aa) and (bb) of subclause (I); and

(III) does not include—

(aa) any entity that is a type of business concern (or would be, if such entity were a business concern) described in *section 120.110 of title 13, Code of Federal R*egulations (or in any successor regulation or other related guidance or rule that may be issued by the Administrator) other than a business concern described in subsection (a) or (k) of such section; or

(bb) any business concern or entity primarily engaged in political or lobbying activities, which shall include any entity that is organized for research or for engaging in advocacy in areas such as public policy or political strategy or otherwise describes itself as a think tank in any public documents;

(cc) any business concern or entity—

(AA) for which an entity created in or organized under the laws of the People's Republic of China or the Special Administrative Region of Hong Kong, or that has significant operations in the People's Republic of China or the Special Administrative Region of Hong Kong, owns or holds, directly or indirectly, not less than 20 percent of the economic interest of the business concern or entity, including as equity shares or a capital or profit interest in a limited liability company or partnership; or

(BB) that retains, as a member of the board of directors of the business concern, a person who is a resident of the People's Republic of China;

(dd) any person required to submit a registration statement under section 2 of the Foreign Agents Registration Act of 1938 (*22 U.S.C. 612*); or

(ee) an eligible person or entity (as defined under section 24 of the Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act [*15 USCS § 9009a*]) that receives a grant under such section 24 [*15 USCS § 9009a*]; and

(v) the term "Tribal business concern" means a Tribal business concern described in section 31(b)(2)(C) [*15 USCS § 657a(b)(2)(C)*].

(B) Loans. Except as otherwise provided in this paragraph, the Administrator may guarantee covered loans to eligible entities under the same terms, conditions, and processes as a loan made under paragraph (36).

(C) Maximum loan amount.

(i) In general. Except as otherwise provided in this subparagraph, the maximum amount of a covered loan made to an eligible entity is the lesser of—

(I) the product obtained by multiplying—

(aa) at the election of the eligible entity, the average total monthly payment for payroll costs incurred or paid by the eligible entity during—

(AA) the 1-year period before the date on which the loan is made; or

(BB) calendar year 2019; by

(bb) 2.5; or

(II) $2,000,000.

(ii) Seasonal employers. The maximum amount of a covered loan made to an eligible entity that is a seasonal employer is the lesser of—

(I) the product obtained by multiplying—

(aa) at the election of the eligible entity, the average total monthly payments for payroll costs incurred or paid by the eligible entity for any 12-week period between February 15, 2019 and February 15, 2020; by

(bb) 2.5; or

(II) $2,000,000.

(iii) New entities. The maximum amount of a covered loan made to an eligible entity that did not exist during the 1-year period preceding February 15, 2020 is the lesser of—

(I) the product obtained by multiplying—

(aa) the quotient obtained by dividing—

(AA) the sum of the total monthly payments by the eligible entity for payroll costs paid or incurred by the eligible entity as of the date on which the eligible entity applies for the covered loan; by

(BB) the number of months in which those payroll costs were paid or incurred; by

(bb) 2.5; or

(II) $2,000,000.

(iv) NAICS 72 entities. The maximum amount of a covered loan made to an eligible entity that is assigned a North American Industry Classification System code beginning with 72 at the time of disbursal is the lesser of—

(I) the product obtained by multiplying—

(aa) at the election of the eligible entity, the average total monthly payment for payroll costs incurred or paid by the eligible entity during—

(AA) the 1-year period before the date on which the loan is made; or

(BB) calendar year 2019; by

(bb) 3.5; or

(II) $2,000,000.

(D) Business concerns with more than 1 physical location.

(i) In general. For a business concern with more than 1 physical location, the business concern shall be an eligible entity if the business concern would be eligible for a loan under paragraph (36) pursuant to clause (iii) of subparagraph (D) of such paragraph, as applied in accordance with clause (ii) of this subparagraph, and meets the revenue reduction requirements described in item (bb) of subparagraph (A)(iv)(I).

(ii) Size limit. For purposes of applying clause (i), the Administrator shall substitute “not more than 300 employees” for “not more than 500 employees” in paragraph (36)(D)(iii).

(E) Waiver of affiliation rules.

(i) In general. The waiver described in paragraph (36)(D)(iv) shall apply for purposes of determining eligibility under this paragraph.

(ii) Size limit. For purposes of applying clause (i), the Administrator shall substitute “not more than 300 employees” for “not more than 500 employees” in subclause (I) and (IV) of paragraph (36)(D)(iv).

(F) Loan number limitation. An eligible entity may only receive 1 covered loan.

(G) Exception from certain certification requirements. An eligible entity applying for a covered loan shall not be required to make the certification described in clause (iii) or (iv) of paragraph (36)(G).

(H) Fee waiver. With respect to a covered loan—

(i) in lieu of the fee otherwise applicable under paragraph (23)(A), the Administrator shall collect no fee; and

(ii) in lieu of the fee otherwise applicable under paragraph (18)(A), the Administrator shall collect no fee.

(I) Gross receipts and simplified certification of revenue test.

(i) Loans of up to $150,000. For a covered loan of not more than $150,000, the eligible entity—

(I) may submit a certification attesting that the eligible entity meets the applicable revenue loss requirement under subparagraph (A)(iv)(I)(bb); and

(II) if the eligible entity submits a certification under subclause (I), shall, on or before the date on which the eligible entity submits an application for forgiveness under subparagraph (J), produce adequate documentation that the eligible entity met such revenue loss standard.

(ii) For nonprofit and veterans organizations. For purposes of calculating gross receipts under subparagraph (A)(iv)(I)(bb) for an eligible entity that is a nonprofit organization, a veterans organization, or an organization described in subparagraph (A)(iv)(II), gross receipts means gross receipts within the meaning of *section 6033 of the Internal Revenue Code of 1986* [*26 USCS § 6033*].

(J) Loan forgiveness.

(i) Definition of covered period. In this subparagraph, the term "covered period" has the meaning given that term in section 7A(a) [*15 USCS § 636m(a)*].

(ii) Forgiveness generally. Except as otherwise provided in this subparagraph, an eligible entity shall be eligible for forgiveness of indebtedness on a covered loan in the same manner as an eligible recipient with respect to a loan made under paragraph (36) of this section, as described in section 7A [*15 USCS § 636m*].

(iii) Forgiveness amount. An eligible entity shall be eligible for forgiveness of indebtedness on a covered loan in an amount equal to the sum of the following costs incurred or expenditures made during the covered period:

(I) Payroll costs, excluding any payroll costs that are—

(aa) qualified wages, as defined in subsection (c)(3) of section 2301 of the CARES Act (*26 U.S.C. 3111* note), taken into account in determining the credit allowed under such section;

(bb) qualified wages taken into account in determining the credit allowed under subsection (a) or (d) of section 303 of the Taxpayer Certainty and Disaster Relief Act of 2020 [unclassified]; or

(cc) premiums taken into account in determining the credit allowed under *section 6432 of the Internal Revenue Code of 1986* [*26 USCS § 6432*].

(II) Any payment of interest on any covered mortgage obligation (which shall not include any prepayment of or payment of principal on a covered mortgage obligation).

(III) Any covered operations expenditure.

(IV) Any covered property damage cost.

(V) Any payment on any covered rent obligation.

(VI) Any covered utility payment.

(VII) Any covered supplier cost.

(VIII) Any covered worker protection expenditure.

(iv) Limitation on forgiveness for all eligible entities. Subject to any reductions under section 7A(d) [*15 USCS § 636m(d)*], the forgiveness amount under this subparagraph shall be equal to the lesser of—

(I) the amount described in clause (ii); and

(II) the amount equal to the quotient obtained by dividing—

(aa) the amount of the covered loan used for payroll costs during the covered period; and

(bb) 0.60.

(v) Submission of materials for forgiveness. For purposes of applying subsection (l)(1) of section 7A [*15 USCS § 636m*] to a covered loan of not more than $150,000 under this paragraph, an eligible entity may be required to provide, at the time of the application for forgiveness, documentation required to substantiate revenue loss in accordance with subparagraph (I).

(K) Lender eligibility. Except as otherwise provided in this paragraph, a lender approved to make loans under paragraph (36) may make covered loans under the same terms and conditions as in paragraph (36).

(L) Reimbursement for loan processing and servicing. The Administrator shall reimburse a lender authorized to make a covered loan—

(i) for a covered loan of not more than $50,000, in an amount equal to the lesser of—

(I) 50 percent of the balance of the financing outstanding at the time of disbursement of the covered loan; or

(II) $2,500;

(ii) at a rate, based on the balance of the financing outstanding at the time of disbursement of the covered loan, of—

(I) 5 percent for a covered loan of more than $50,000 and not more than $350,000; and

(II) 3 percent for a covered loan of more than $350,000.

(M) Publication of guidance. Not later than 10 days after the date of enactment of this paragraph [enacted Dec. 27, 2020], the Administrator shall issue guidance addressing barriers to accessing capital for minority, underserved, veteran, and women-owned business concerns for the purpose of ensuring equitable access to covered loans.

(N) Standard operating procedure. The Administrator shall, to the maximum extent practicable, allow a lender approved to make covered loans to use existing program guidance and standard operating procedures for loans made under this subsection.

(O) Supplemental covered loans. A covered loan under this paragraph may only be made to an eligible entity that—

(i) has received a loan under paragraph (36); and

(ii) on or before the expected date on which the covered loan under this paragraph is disbursed to the eligible entity, has used, or will use, the full amount of the loan received under paragraph (36).

(b) Disaster loans; authorization, scope, terms and conditions, etc. Except as to agricultural enterprises as defined in section 18(b)(1) of this Act [*15 USCS § 647(b)(1)*], the Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

(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: *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 costs of such damage or destruction (whether or not compensated for by insurance or otherwise) 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—

(i) construction of retaining walls and sea walls;

(ii) grading and contouring land; and

(iii) 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; (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) 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 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) 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 cooperative located in an area affected by a disaster[,] (including drought), with respect to both farm-related and nonfarm-related small business concerns, if the Administration 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.);

(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;

(C) a disaster, as determined by the Administrator of the Small Business Administration;

(D) an emergency involving Federal primary responsibility determined to exist by the President under the section 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (*42 U.S.C. 5191(b)*); or

(E) if no disaster or emergency declaration has been issued pursuant to subparagraph (A), (B), (C), or D, the Governor of a State in which a disaster or emergency has occurred may certify to the Small Business Administration that small business concerns, private nonprofit organizations, or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster or emergency, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster- or emergency-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 writing to that Governor on its determination and the reasons therefore [therefor], and may then make such loans as would have been available under this paragraph if a disaster or emergency declaration had been issued.

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: *Provided further,* That for purposes of subparagraph (D), the Administrator shall deem that such an emergency affects each State or subdivision thereof (including counties), and that each State or subdivision has sufficient economic damage to small business concerns to qualify for assistance under this paragraph and the Administrator shall accept applications for such assistance immediately.

(3)

(A) In this paragraph—

(i) the term “active service” has the meaning given that term in *section 101(d)(3) of title 10, United States Code*;

(ii) 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; and

(iii) the term “substantial economic injury” means an economic harm to a business concern that results in the inability of the business concern—

(I) to meet its obligations as they mature;

(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 perform active service for a period of more than 30 consecutive days.

(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 service and ending on the date that is 1 year after the date on which such essential employee is discharged or released from active service. 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 [has] become due to changed economic circumstances, 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.

(G)

(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—

(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 service.

(H) 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.

(4) 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.

(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—

(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.

(6) 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 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) 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—

(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) Increased loan caps.

(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) 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—

(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—

(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) 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 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;

(ii) the term “disaster-related substantial economic injury” means economic harm to a business concern that results in the inability of the business concern to—

(I) meet its obligations as it matures;

(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—

(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) 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) 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) Additional awards to small business development centers, women’s business centers, and score for disaster recovery.

(A) In general. The Administration may provide financial assistance to a small business development center, a women’s business center described in section 29 [*15 USCS § 656*], 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.

(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.

(13) 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 damage 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.

(14) 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

(ii) ensure that the locations identified under subparagraph (A) may be used as a recovery center without cost to the Government, to the extent practicable.

(15) 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.

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 of not to exceed five years, if (A) the borrower under such loan is a homeowner 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 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) 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), 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. 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 prepare and transmit to the Select Committee on Small Business [Committee on Small Business and Entrepreneurship] 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 activities.

In the administration of the disaster loan program under paragraphs (1) and (2) 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 resident 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 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.

(E) 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 [*42 USCS § 5155(a)*] to a disaster loan under paragraph (1) [or] (2) of this subsection.

With respect to any loan referred to in clause (D) which is outstanding on the date of enactment of this paragraph [enacted Aug. 16, 1972], the Administrator shall—

(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, considered 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 [*15 USCS § 636a*].

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.

(c) Private disaster loans.

(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;

(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);

(C) the term “eligible small business concern” means a business concern that is—

(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 [*15 USCS § 662*];

(D) the term "preferred lender" means a lender participating in the Preferred Lender Program;

(E) the term "Preferred Lender Program" has the meaning given that term in subsection (a)(2)(C)(ii); and

(F) the term "qualified private lender" means any privately-owned bank or other lending institution that—

(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.

(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.

(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.

(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.

(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.

(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 [enacted June 18, 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 [enacted June 18, 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.

(11) 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).

(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) Extension or renewal of loans; purchase of participations; assumption of obligations; disaster loans; interest rates; loan amounts.

(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 [*5 USCS § 903* note], or Reorganization Plan Numbered 1 of 1957 [*5 USCS § 903* note], 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.

(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.

(3) With respect to a disaster occurring on or after October 1, 1978, and prior [to] the effective date of this Act, on the Administration's share of loans made pursuant to paragraph (1) of subsection (b)—

(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

(C) 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 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 $500,000 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.

(4) 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;

(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 [subsec. (a) of this section]. Loans under this subparagraph shall be limited to a maximum term of three years.

(5) 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;

(C) in the case of a business, private nonprofit organization, or other concern, including agricultural cooperatives, 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 to 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 [subsec. (a) of this section], or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of 7 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) [subsec. (b)(1)(A), (B) of this section], shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under paragraphs 7(b)(1) and (2) [subsec. (b)(1), (2) of this section], 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) [subsec. (b)(1), (2) of this section] 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) [subsec. (b) of this section] 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: *Provided further,* That the Administration, subject to the reductions required by subparagraphs (A) and (B) of paragraph 7(b)(1) [subsec. (b)(1) of this section], 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 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): *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. Employees of concerns sharing a common business premises shall be aggregated in determining “major source of employment” status for nonprofit applicants owning such premises.

With respect to any loan which is outstanding on the date of enactment of this paragraph [enacted April 18, 1984] 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 [enacted April 18, 1984].

(7) 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) [subsec. (b)(2) of this section] 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.

(8) Disaster loans for Superstorm Sandy.

(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

(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) Funds for small business development centers under *15 USCS § 648*. The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 21 of this Act [*15 USCS § 648*].

(f) Additional requirements for subsection (b) loans.

(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.

(2) [Not enacted]

(g) Net earnings clauses prohibited for subsection (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) Loans to handicapped persons and organizations for handicapped.

(1) 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

(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 [*15 USCS § 633(c)(1)(B)*] would exceed $350,000. In agreements 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. 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.

(i) Loans to small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals.

(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) 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.

(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 $100,000 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.

(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 [*15 USCS § 639(a)*].

(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—

(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* [3121] et seq.) shall not exceed the rate currently applicable to new loans made under section 201 of that Act (*42 U.S.C. 3142* [3141]); and

(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 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 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) No financial assistance shall be extended pursuant to this subsection where 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.

(j) Financial assistance for projects providing technical or management assistance; areas of high concentration of unemployment or low-income; preferences; manner and method of payment; accessible services; program evaluations; establishment of development program; coordination of policies.

(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 [subsec. (i) of this section, para. (10) of this subsec., and *15 USCS § 637(a)*], 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 [*15 USCS § 637(a)*].

(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 [subsec. (i) of this section para. (10) of this subsec., and *15 USCS § 637(a)*];

(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 unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 8(a) of this Act [*15 USCS § 637(a)*]. 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 [subsec. (i) of this section, this subsection, and *15 USCS § 637(a)*].

(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 [*15 USCS § 637(a)*].

(5) The financial assistance authorized for projects under this subsection includes assistance advanced by grant, agreement, or contract.

(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]

(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 [subsec. (i) of this section, this subsec., and *15 USCS § 637(a)*].

(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 [*15 USCS § 637(a)*]. The program, and all other services and activities authorized under section 7(j) and 8(a) of this Act [this subsection and *15 USCS § 637(a)*], shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The Program shall—

(i) 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 the Program; and

(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 [*15 USCS §§ 694a* et seq.].

(B) Small business concerns eligible to receive contracts pursuant to section 8(a) of this Act [*15 USCS § 637(a)*] shall participate in the Program.

(C)

(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) [*15 USCS § 637(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—

(I) 9 years less the number of years since the award of its first contract pursuant to section 8(a) [*15 USCS § 637(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)

(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 Specialist assigned to assist such Program Participant. 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) [15 USCS § 837(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) [15 USCS § 837(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) [15 USCS § 837(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) [*15 USCS § 637(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) and section 8(a) [*15 USCS § 637(a)*].

(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) [*15 USCS § 637(a)*].

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 8(a) [*15 USCS § 637(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) [*15 USCS § 637(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) [*15 USCS § 637(a)*], reflecting compliance with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 8(a) [*15 USCS § 637(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) 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) [*15 USCS § 637(a)*] shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

(ii) completes the period of Program participation as prescribed by paragraph (15);

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 8(a)(9) [*15 USCS § 637(a)(9)*]; or

(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 8(a)(9) [*15 USCS § 637(a)(9)*].

(F) For purposes of this section and section 8(a) [*15 USCS § 637(a)*], the term “terminated” and the term “termination” means the total denial or suspension of assistance under this paragraph or under section 8(a) [*15 USCS § 637(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—

(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) [15 USCS § 837(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 [*15 USCS § 645*]. 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 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) [15 USCS § 837(a)(9)].

(H) For the purposes of sections 7(j) and 8(a) [*15 USCS §§ 636(j)*, *637(a)*] the term "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) [*15 USCS § 637(a)*].

(I)

(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) [*15 USCS § 637(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 a reasonable marketing strategy that will maximize its potential to achieve its 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) [*15 USCS § 637(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;

(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) [*15 USCS § 637(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);

(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

(V) authorize the Administration to take appropriate remedial 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) [*15 USCS § 637(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) [*15 USCS § 637(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) [*15 USCS § 637(a)(9)*].

(J)

(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) [15 USCS § 837(a)] may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

(ii)

(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 8(a) [*15 USCS § 637(a)*] to a concern other than a small business concern.

(II) 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" [*15 USCS § 637* note], shall be eligible for award of a contract pursuant to section 8(a) [*15 USCS § 637(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 under section 7(i) of this Act [subsec. (i) of this section] and small business concerns eligible to receive contracts pursuant to section 8(a) of this Act [*15 USCS § 637(a)*].

(B)

(i) Except as provided in clause (iii), no individual who was determined pursuant to section 8(a) [*15 USCS § 637(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) [*15 USCS § 637(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) [para. 10 of this subsec. and *15 USCS § 637(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) [*15 USCS § 637(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) [*15 USCS § 637(a)(4)*]) to individuals who are determined to be socially and economically disadvantaged pursuant to section 8(a) [*15 USCS § 637(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).

(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the "Division") that shall be made part of the Office of Minority Small Business 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) [*15 USCS § 637(a)(9)*], the functions and 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) [*15 USCS § 637(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) [*15 USCS § 637(a)*];

(v) make a request for the initiation of termination or graduation proceedings, as appropriate, to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(vi) make recommendations to the Associate Administrator for Minority Small Business and Capital Ownership Development concerning protests from applicants that have been denied program admission;

(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 8 [*15 USCS § 637(d)*], 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) 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.

(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 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

(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)

(A) The Administration shall segment the Capital Ownership Development Program into two stages: a developmental stage; and a transitional stage.

(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.

(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.

(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12 [(12)]:

(A) Contract support pursuant to section 8(a) [*15 USCS § 637(a)*].

(B) Financial assistance pursuant to section 7(a)(20) [*15 USCS § 636(a)(20)*].

(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) [*15 USCS § 637(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.

(D) A maximum of five exemptions from the requirements of the Act entitled “An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works”, approved August 24, 1935 (*49 Stat. 793*) [*40 USCS §§ 3131*–*3133*], which exemptions shall apply only to contracts awarded pursuant to section 8(a) [*15 USCS § 637(a)*], except that, such exemptions may be granted under this subparagraph only if—

(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.

(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. Such assistance may be made without regard to section 18(a) [*15 USCS § 647(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 Innovation and Opportunity Act [*29 USCS §§ 3111* et seq.]. The Administration shall, in consultation with 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—

(i) such concern has documented that it has first explored the use of 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 Government) during such concern's term of participation in the Program and for one year thereafter.

(ii)

(I) In this clause—

(aa) the term "covered period" means the 2-year period beginning on the date on which the President declared the applicable major disaster; and

(bb) the term "disaster area" means the area for which the President has declared a major disaster, during the covered period.

(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 transfers 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)

(I) In this clause, the term "covered period" means—

(aa) in the case of a Puerto Rico business, the period beginning on August 13, 2018, and ending on the date on which the Oversight Board established under section 2121 of title 48 [*48 USCS § 2121*] terminates; and

(bb) in the case of a covered territory business, the period beginning on the date of the enactment of this item [enacted Jan. 1, 2021] and ending on the date that is 4 years after such date of enactment [enacted Jan. 1, 2021].

(II) The Administrator may transfer technology or surplus property under clause (i) to a Puerto Rico business or a covered territory business if either such business meets the requirements for such a transfer, without regard to whether either such business is a Program Participant.

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 8(a) [*15 USCS § 637(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-follower 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.

(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) 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) 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) [*15 USCS § 637(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—

(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.

(16)

(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).

(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:

(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) [*15 USCS § 637(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) [*15 USCS § 637(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) [*15 USCS § 636(a)(13)*, (14), (20)] during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 8(a) [*15 USCS § 637(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.

(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) [*15 USCS § 637(a)*].

(vii) The total dollar value of contracts and options awarded pursuant to section 8(a) [*15 USCS § 637(a)*], at such dollar increments as the Administrator deems appropriate, for each four digit 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) Functions relating to loans and financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals. In carrying out its functions under subsections 7(i), 7(j) and 8(a) of this Act [subsecs. (i) and (j) of this section and *15 USCS § 637(a)*], the Administration is authorized—

(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;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 3679(b) of the Revised Statutes (31 U.S.C. 655(b)) [*31 USCS § 1342*]; and

(4) to employ experts and consultants or organizations thereof as authorized by section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a) [*5 USCS § 3109*], 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*, 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) [*5 USCS § 5703*] for persons in the Government service employed intermittently, while so employed: *Provided, however,* That contracts for such employment may be renewed annually.

(l) Small business intermediary lending pilot program.

(1) Definitions. In this subsection—

(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).

(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 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.

(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

(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 [enacted Sept. 27, 2010].

(m) Microloan Program.

(1)

(A) Purposes. The purposes of the Microloan Program are—

(i) to assist women, low-income, veteran (within the meaning of such term under section 3(q) [*15 USCS § 632(q)*]), and minority entrepreneurs and business owners and other such individuals possessing the capability to operate successful business concerns; and

(ii) to assist small business concerns in those areas suffering from a lack of credit due to economic downturns;

(iii) 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, 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) 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—

(I) establishing small businesses; and

(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 $50,000 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—

(A) meets the definition in paragraph (10) [(11)]; 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.

(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;

(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) 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 business concerns.

(ii) 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. 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.

(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 such intermediary's participation in the program, $7,000,000 (in the aggregate) in the remaining years of the intermediary's participation in the program, and $3,000,000 in any of those remaining years.

(D)

(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.

(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 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 [subclause] 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—

(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 $20,000 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, or have outstanding or committed to any 1 borrower more than $50,000.

(F) Loan duration; interest rates.

(i) Loan duration. Loans made by the Administration under this subsection shall be for a term of 10 years.

(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.

(iii) Rates applicable to certain small loans. Loans made by the Administration to an intermediary that makes loans to small 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 loan-making site or office of 1 intermediary only if such site or office meets the requirements of that clause.

(v) Rate basis. The applicable rate of interest under this paragraph shall—

(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, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

(vi) [Not enacted]

(vii) 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.

(4) 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:

(A) Grant amounts. Except as otherwise provided in subparagraphs (C) and (G) and subject to 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. Except as provided in subparagraphs (C) and (G), each 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.

(B) Contribution. As a condition of a grant made under subparagraph (A), the Administrator shall require the intermediary to contribute an amount equal to 25 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.

(C) Additional technical assistance grants for making certain loans.

(i) In general. In addition to grants made under subparagraph (A) or (G), 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 1 or more residents of an economically distressed area; or

(II) the intermediary has a portfolio of loans made under this subsection—

(aa) that averages not more than $10,000 during the period of the intermediary's participation in the program; or

(bb) of which not less than 25 percent is serving rural areas during the period of the intermediary's participation in the program.

(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.

(D) Eligibility for multiple sites or offices. The 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) Assistance to certain small business concerns.

(i) In general. Each intermediary may expend an amount not to exceed 50 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 50 percent of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

(F) 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 [note to this section] 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 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—

(I) are in addition to other grants provided under this subsection and shall not require the contribution of matching amounts as a condition of eligibility; and

(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. 9858* et seq.) or under part A of title IV of the Social Security Act (*42 U.S.C. 601* 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.

(G) Grant amounts based on appropriations. In any fiscal year in which the amount appropriated to make grants under subparagraph (A) is sufficient to provide to each intermediary that receives a loan under paragraph (1)(B)(i) a grant of not less than 25 percent of the total outstanding balance of loans made to the intermediary under this subsection, the Administration shall make a grant under subparagraph (A) to each intermediary of not less than 25 percent and not more than 30 percent of that total outstanding balance for the intermediary.

(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:

(A) Grant amounts. Subject to the requirements of subparagraph (B), the Administration may make not more than 55 grants annually, each 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.

(6) Loans to small business concerns from eligible 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.

(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 shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

(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.

(E) Establishment of child care or transportation businesses. In addition to other eligible small businesses concerns, borrowers under any program under this subsection may include individuals who will use the loan proceeds to establish for-profit or nonprofit child care establishments or businesses providing for-profit transportation services.

(7) Program funding for microloans.

(A) Number of participants. Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.

(B) Allocation.

(i) Minimum allocation. Subject to the availability of appropriations, of the total amount of new loan funds made available for 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

(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) Equitable distribution of intermediaries. In approving microloan program applicants and providing funding to intermediaries 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.

(9) Grants for management, marketing, technical assistance, and related services.

(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 practices necessary to operate successful microloan programs.

(B) Assistance amount. The Administration shall transfer 7 percent of its annual appropriation for loans and loan guarantees under this subsection to the Administration'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 financing[.] to achieve the purpose set forth in subparagraph (A).

(C) Welfare-to-work microloan initiative. 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.

(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 ½ years of the microloan program and the following:

(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

(G) any recommendations for legislative changes that would improve program operations.

(11) Definitions. For purposes of this subsection—

(A) the term "intermediary" means—

(i) a private, nonprofit entity;

(ii) a private, nonprofit community development corporation;

(iii) 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) an agency of or nonprofit entity established by a Native American Tribal Government,

that seeks to borrow or has borrowed funds from the 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, made by an intermediary to a startup, newly established, or growing small business concern;

(C) the term "rural area" means any political subdivision or unincorporated area—

(i) in a nonmetropolitan county (as defined by the 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) 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.

(12) 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:

(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) 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).

(n) Repayment deferred for active service reservists.

(1) Definitions. In this subsection:

(A) Active service. The term “active service” has the meaning given that term in *section 101(d)(3) of title 10, United States Code*.

(B) Eligible reservist. The term “eligible reservist” means a member of a reserve component of the Armed Forces ordered to perform active service for a period of more than 30 consecutive days.

(C) 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.

(D) Qualified borrower. The term “qualified borrower” means—

(i) an individual who is an eligible reservist and who received a direct loan under subsection (a) or (b) before being ordered to active service; 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 service.

(2) 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 service and shall terminate on the date that is 180 days after the date such eligible reservist is discharged or released from active service.

(C) Interest rate reduction during deferral. Notwithstanding any other provision of law, during the period of deferral described in subparagraph (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—

(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 [enacted Aug. 17, 1999], 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 [*15 USCS § 697a*] 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.

History

HISTORY:

July 18, 1958, *P. L. 85-536*, § 2 [7], *72 Stat. 387*; Aug. 21, 1958, *P. L. 85-699*, Title VI, § 602(c), *72 Stat. 698*; Sept. 22, 1959, *P. L. 86-367*, § 2, *73 Stat. 647*; June 30, 1961, *P. L. 87-70*, Title III, § 305(a), *75 Stat. 167*; Sept. 26, 1961, *P. L. 87-305*, § 9, *75 Stat. 668*; Feb. 5, 1964, *P. L. 88-264*, § 1, *78 Stat. 7*; Sept. 2, 1964, *P. L. 88-560*, Title III, § 319, *78 Stat. 794*; June 30, 1965, *P. L. 89-59*, § 1(a), (b), *79 Stat. 206*; May 2, 1966, *P. L. 89-409*, § 3(a), *80 Stat. 133*; Nov. 6, 1966, *P. L. 89-769*, § 7(b), *80 Stat. 1319*; Oct. 11, 1967, *P. L. 90-104*, Title I, §§ 103, 104, *81 Stat. 268*; Aug. 1, 1968, *P. L. 90-448*, Title XI, § 1106(a), *82 Stat. 567*; Aug. 23, 1968, *P. L. 90-495*, § 31, *82 Stat. 835*; Dec. 30, 1969, *P. L. 91-173*, Title V, § 504(a), (b), *83 Stat. 802*; Dec. 29, 1970, *P. L. 91-596*, § 28(a), (b), *84 Stat. 1618*; Dec. 29, 1970, *P. L. 91-597*, § 25(a), (b), *84 Stat. 1633*, 1634; Aug. 16, 1972, *P. L. 92-385*, §§ 1(a), 2(a), *86 Stat. 554*, 555; Oct. 18, 1972, *P. L. 92-500*, § 8(a), *86 Stat. 898*; Oct. 27, 1972, *P. L. 92-595*, § 3(b), *86 Stat. 1316*; Jan. 2, 1974, *P. L. 93-237*, §§ 2(a), (b), 3(a), 5, 6, *87 Stat. 1023*, 1024; Aug. 23, 1974, *P. L. 93-386*, §§ 2(4), 3(2), 8, 9, 12, *88 Stat. 742*, 746, 748, 749; June 4, 1976, *P. L. 94-305*, Title I, §§ 108(b), 109, 111, 112(c), (d), 114, *90 Stat. 666*, 667; Aug. 4, 1977, *P. L. 95-89*, Title I, § 101(d), (e), Title III, §§ 301, 302, Title IV, §§ 402–405, *91 Stat. 553*, 558–560; July 4, 1978, *P. L. 95-315*, §§ 2, 3, *92 Stat. 377*, 378; Oct. 24, 1978, *P. L. 95-507*, Title II, ch 1, §§ 204, 205, Ch 4, § 231, *92 Stat. 1764*, 1766, 1772; Oct. 24, 1978, *P. L. 95-510*, § 104, *92 Stat. 1782*; July 25, 1979, *P. L. 96-38*, Title I, Ch IX, § 101(a), (b), *93 Stat. 118*; July 2, 1980, *P. L. 96-302*, Title I, Part B, §§ 119(a), (b), 122–124, Title II, § 203, Title V, § 505, *94 Stat. 840*, 841, 843, 848, 852.; Oct. 21, 1980, *P. L. 96-481*, [Title I], Part A, §§ 104, 106(a), 107, Part B, § 112, *94 Stat. 2322*, 2323; Aug. 13, 1981, *P. L. 97-35*, Title XIX, §§ 1902, 1911–1913(a), (c), 1914, *95 Stat. 767*, 778–780; Aug. 13, 1981, *P. L. 97-35*, Title XIX, § 1910, *95 Stat. 778*; April 18, 1984, *P. L. 98-270*, Title III, §§ 301, 304, 308, 309, 311, *98 Stat. 159*–161; Aug. 21, 1984, *P. L. 98-395*, § 5, *98 Stat 1368*; April 7, 1986, *P. L. 99-272*, Title XVIII, §§ 18006(a)(1), (2), 18007, 18013, *100 Stat. 366*, 370; Aug. 23, 1988, *P. L. 100-418*, Title VIII, §§ 8005, 8007(a), *102 Stat. 1557*, 1559; Oct. 25, 1988, *P. L. 100-533*, Title III, § 302(a), *102 Stat. 2693*; Nov. 3, 1988, *P. L. 100-590*, Title I, §§ 102(a), 103, 111(c), 119(a), 120-122, *102 Stat. 2992*, 2995, 2999, 3000; Nov. 15, 1988, *P. L. 100-656*, Title II, §§ 201(a), 202, 205, 206, 208, Title III, §§ 301, 302, 303(a), Title IV, § 408, Title V, § 505(h), *102 Stat. 3856*, 3858, 3859, 3861, 3862, 3865, 3867, 3868, 3877, 3887); Nov. 23, 1988, *P. L. 100-707*, Title I, § 109(f), *102 Stat. 4708*; June 15, 1989, *P.*

L. 101-37, §§ 4, 5, 6(a), 7(a), 8, 9, 10(a), (b), *103 Stat. 70*-73; Nov. 21, 1989, *P. L. 101-162*, Title V, §§ (1), (2), *103 Stat. 1024*, 1025; Nov. 15, 1990, *P. L. 101-574*, Title II, Part A, §§ 202, 204(a), 206, Part E, §§ 242, 245, Title III, § 307, *104 Stat. 2818*-2820, 2827, 2830; Oct. 28, 1991, *P. L. 102-140*, Title VI, § 609(b), (h), *105 Stat. 825*, 827; Dec. 5, 1991, *P. L. 102-191*, § 4, *105 Stat. 1591*; Sept. 4, 1992, *P. L. 102-366*, Title I, Subtitle A, § 104, Subtitle B, § 113(a), Title II, Subtitle B, § 211, *106 Stat. 988*, 989, 997; Oct. 28, 1992, *P. L. 102-564*, Title III, § 307(b), (c), *106 Stat. 4263*; Aug. 13, 1993, *P. L. 103-81*, §§ 4, 5(a), 7, 8, *107 Stat. 781*, 782; Oct. 22, 1994, *P. L. 103-403*, Title II, §§ 201, 202, 204–208(a), (b), 209–211, 311, Title VI, §§ 603–605(a), *108 Stat. 4180*–4183, 4202, 4203.; Oct. 12, 1995, *P. L. 104-36*, §§ 2, 3, 4(a), 5, *109 Stat. 295*, 297; Sept. 30, 1996, *P. L. 104-208*, Div D, Title I, §§ 103(a)–(d), (f), 105, 107, 111, *110 Stat. 3009*-726, 3009-727, 3009-731, 3009-732, 3009-733; Dec. 2, 1997, *P. L. 105-135*, Title II, Subtitle A, §§ 201–202(a), Subtitle C, § 231, Title VII, § 706, *111 Stat. 2597*, 2606, 2637; Oct. 21, 1998, *P. L. 105-277*, Div A, § 101(f) [Title VIII, Subtitle IV, § 405(d)(10), (f)(9)], *112 Stat. 2681*-420, 2681-430; April 2, 1999, *P. L. 106-8*, § 3(a), *113 Stat. 13*; April 27, 1999, *P. L. 106-22*, §§ 2, 3, *113 Stat. 36*; April 27, 1999, *P. L. 106-24*, § 1(a), *113 Stat. 39*; Aug. 17, 1999, *P. L. 106-50*, Title IV, §§ 401(b), 402(a), (b), 403, 404, *113 Stat. 244*, 246; Dec. 21, 2000, *P. L. 106-554*, § 1(a)(9), *114 Stat. 2763*; Dec. 21, 2001, *P. L. 107-100*, § 6(a), *115 Stat. 970*; Dec. 8, 2004, Div K, Title I, Subtitle A, §§ 101(a), 102, 103(a), 107(a), (b), *118 Stat. 3442*, 3443, 3445; Jan. 6, 2006, *P. L. 109-163*, Div A, Title VIII, Subtitle E, § 845(a)(2), (c), *119 Stat. 3390*, 3391; Dec. 19, 2007, *P. L. 110-140*, Title XII, §§ 1201, 1202, *121 Stat. 1764*; Feb. 14, 2008, *P. L. 110-186*, Title II, §§ 201(a), 203, 204, 208, *122 Stat. 627*, 629, 631; May 22, 2008, *P. L. 110-234*, Title XII, Subtitle B, Part I, §§ 12061, 12063(a), (c)(2), 12065, 12066(a), 12068(a), (b)(2), 12070, 12074, 12077, 12078(a), (b)(1), (c), Part II, §§ 12081–12083(a), *122 Stat. 1406*, 1407, 1409, 1410, 1411, 1414, 1415, 1416.; June 18, 2008, *P. L. 110-246*, § 4(a), Title XII, Subtitle B, Part I, §§ 12061, 12063(a), (c)(2), 12065, 12066(a), 12068(a), (b)(2), 12070, 12074, 12077, 12078(a), (b)(1), (c), Part II, §§ 12081–12083(a), *122 Stat. 1664*, 2168, 2169, 2171, 2172, 2173, 2176, 2177, 2178.; Sept. 27, 2010, *P. L. 111-240*, Title I, Subtitle A, Part I, §§ 1111, 1113, Part III, §§ 1131(a), 1133, 1135, Subtitle B, § 1206(a)–(g), Subtitle D, § 1401(a), (c)(1), *124 Stat. 2507*, 2508, 2512, 2514, 2520, 2530, 2547, 2549; Dec. 23, 2011, *P. L. 112-74*, Div C, Title V, § 531, *125 Stat. 922*; Jan. 2, 2013, *P. L. 112-239*, Div A, Title XVI, Subtitle C, Part I, § 1622(c), *126 Stat. 2069*; July 22, 2014, *P. L. 113-128*, Title V, Subtitle B, § 512(cc), *128 Stat. 1717*; July 28, 2015, *P. L. 114-38*, §§ 2, 4(b), *129 Stat. 437*, 438; Nov. 25, 2015, *P. L. 114-88*, Div A, Title I, §§ 1101–1104, Div B, Title I, §§ 2101, 2102(a), (b), 2105–2107, 2109, Title II, § 2201, Title III, §§ 2301(a), *129 Stat. 687*, 688, 689, 690, 692, 694–696.; Nov. 25, 2015, *P. L. 114-92*, Div A, Title VIII, Subtitle F, § 865(a)(2), *129 Stat. 928*; March 23, 2018, *P. L. 115-141*, Div E, Title V, § 532, *132 Stat. 581*; June 21, 2018, *P.L. 115-189*, § 4(a)(2), *132 Stat. 1497*; Aug. 13, 2018, *P.L. 115-232*, Div A, Title VIII, Subtitle F, §§ 853(b), 861(c), 862(b)(1), (f), *132 Stat. 1885*, 1896, 1897, 1900; Dec. 21, 2018, *P.L. 115-370*, § 2, *132 Stat. 5105*; Dec. 20, 2019, *P.L. 116-92*, Div A, Title VIII, Subtitle G, § 877(a), *133 Stat. 1529*; Mar. 27, 2020, *P.L. 116-136*, Div A, Title I, §§ 1102(a), (c), (d), 1110(f), *134 Stat. 286*, 294, 308; Apr. 24, 2020, *P.L. 116-139*, Div A, § 101(d), *134 Stat. 621*; June 5, 2020, *P.L. 116-142*, §§ 2(a), 3(a), (c), *134 Stat. 641*, 642; Dec. 27, 2020, *P.L. 116-260*, Div N, Title III, §§ 304(a), (b)(1)(C)(ii), 308(a), 310(a)(1), (b), 311(a), 313(a), 315(a), 316-319, 326, 329(a), 334, 335(a), 336(a), 337(a), 338(a), 339(b), 340(a), (b)(1), 341, 342, 343(a), 344, *134 Stat. 1993*, 1994, 2000, 2001, 2008, 2011, 2013, 2015, 2036, 2041, 2047-2051; Jan. 1, 2021, *P.L. 116-283*, Div A, Title VIII, Subtitle E, § 866(b)(1), (2), *134 Stat. 3785*, 3786; Mar. 11, 2021, *P.L. 117-2*, Title V, § 5001(a), (b), (c)(2), *135 Stat. 81*, 83, 84; Mar. 30, 2021, *P.L. 117-6*, § 2(a), *135 Stat. 250*.

End of Document

15 USCS § 650

Current through Public Law 117-130, approved June 6, 2022.

United States Code Service* > *TITLE 15. COMMERCE AND TRADE (Chs. 1 — 120)* > *CHAPTER 14A. AID TO SMALL BUSINESS (§§ 631 — 657u)

§ 650. Supervisory and enforcement authority for small business lending companies

(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) [*15 USCS § 636(a)*] in accordance with the purposes of this Act.

(b) 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.

(3) Regulations. The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital pursuant to paragraph (1).

(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.

(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 [*15 USCS § 636(a)*]—

(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;

(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 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.

(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 therefor 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 [*5 USCS §§ 701* et seq.]. 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.

(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 [*15 USCS § 636(a)*].

(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 therefor 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 removal under subparagraph (A).

(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 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 [*15 USCS § 636(a)*].

(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.

(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).

(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.

(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.

(A) Issuance of orders. After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been 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 [*5 USCS §§ 701* et seq.].

(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.

(1) In any proceeding under subsection (f)(4) or subsection (g)(6)(C), 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.

(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.

(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.

History

HISTORY:

July 18, 1958, *P. L. 85-536*, § 2 [23], as added Oct. 12, 1984, *P. L. 98-473*, Title I, § 111A, 98 Stat. 1965; Dec. 8, 2004, *P. L. 108-447*, Div K, Title I, Subtitle F, § 161, *118 Stat. 3458*.

End of Document

§ 657t. 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) [*15 USCS § 636(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 [*15 USCS § 650*].

(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.

(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 [premises] of the 7(a) lender; and

(B) supervise any such review that is not conducted on the premise [premises] 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.

(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 Procedures 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 [*15 USCS § 657u*], 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) [*15 USCS § 636(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.

(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) [*15 USCS § 634(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 [enacted June 21, 2018], the Administrator shall issue regulations, after opportunity for notice and comment, to carry out subsection (e).

(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) [*15 USCS § 636(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) [*15 USCS § 636(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) [*15 USCS § 636(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;

(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 [*15 USCS § 657u*];

(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 [31 USCS § 1105a]; 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.

History

July 18, 1958, *P. L. 85-536*, § 2 [47], as added and amended June 21, 2018, *P. L. 115-189*, § 3(a)(2), (b), *132 Stat. 1492*, 1495.

End of Document

15 USCS § 697e

Current through Public Law 117-130, approved June 6, 2022.

United States Code Service > TITLE 15. COMMERCE AND TRADE (Chs. 1 — 120) > CHAPTER 14B. SMALL BUSINESS INVESTMENT PROGRAM (§§ 661 — 697g) > LOANS TO STATE AND LOCAL DEVELOPMENT COMPANIES (§§ 695 — 697g)

§ 697e. Premier certified lenders program

(a) Establishment. The Administration may establish a Premier Certified Lenders Program for certified development companies that meet the requirements of subsection (b).

(b) Requirements.

(1) Application. To be eligible to participate in the Premier Certified Lenders Program established under subsection (a), a certified development company shall prepare and submit to the Administration an application at such time, in such manner, and containing such information as the Administration may require.

(2) Designation. The Administration may designate a certified development company as a premier certified lender—

(A) if the company is an active certified development company in good standing and has been an active participant in the accredited lenders program during the entire 12-month period preceding the date on which the company submits an application under paragraph (1), except that the Administration may waive this requirement if the company is qualified to participate in the accredited lenders program;

(B) if the company has a history of—

(i) submitting to the Administration adequately analyzed debenture guarantee application packages; and

(ii) of properly closing section 504 loans and servicing its loan portfolio;

(C) if the company agrees to assume and to reimburse the Administration for 10 percent of any loss sustained by the Administration as a result of default by the company in the payment of principal or interest on a debenture issued by such company and guaranteed by the Administration under this section (15 percent in the case of any such loss attributable to a debenture issued by the company during any period for which an election is in effect under subsection (c)(7) for such company); and

(D) [if] the Administrator determines, with respect to the company, that the loss reserve established in accordance with subsection (c) is sufficient for the company to meet its obligations to protect the Federal Government from risk of loss.

(3) Applicability of criteria after designation. The Administrator may revoke the designation of a certified development company as a premier certified lender under this section at any time, if the Administrator determines that the certified development company does not meet any requirement described in subparagraphs (A) through (D) of paragraph (2).

(c) Loss reserve.

(1) Establishment. A company designated as a premier certified lender shall establish a loss reserve for financing approved pursuant to this section.

(2) Amount. The amount of each loss reserve established under paragraph (1) shall be 10 percent of the amount of the company's exposure, as determined under subsection (b)(2)(C).

(3) Assets. Each loss reserve established under paragraph (1) shall be comprised of—

(A) segregated funds on deposit in an account or accounts with a federally insured depository institution or institutions selected by the company, subject to a collateral assignment in favor of, and in a format acceptable to, the Administration;

(B) irrevocable letter or letters of credit, with a collateral assignment in favor of, and a commercially reasonable format acceptable to, the Administration; or

(C) any combination of the assets described in subparagraphs (A) and (B).

(4) Contributions. The company shall make contributions to the loss reserve, either cash or letters of credit as provided above, in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

(B) 25 percent additional not later than 1 year after a debenture is closed.

(C) 25 percent additional not later than 2 years after a debenture is closed.

(5) Replenishment. If a loss has been sustained by the Administration, any portion of the loss reserve, and other funds provided by the premier company as necessary, may be used to reimburse the Administration for the premier company's share of the loss as provided in subsection (b)(2)(C). If the company utilizes the reserve, within 30 days it shall replace an equivalent amount of funds.

(6) Disbursements.

(A) In general. The Administration shall allow the certified development company to withdraw from the loss reserve amounts attributable to any debenture that has been repaid.

(B) Temporary reduction based on outstanding balance. Notwithstanding subparagraph (A), during the 2-year period beginning on the date that is 90 days after the date of the enactment of this subparagraph [enacted May 28, 2004], the Administration shall allow the certified development company to withdraw from the loss reserve such amounts as are in excess of 1 percent of the aggregate outstanding balances of debentures to which such loss reserve relates. The preceding sentence shall not apply with respect to any debenture before 100 percent of the contribution described in paragraph (4) with respect to such debenture has been made.

(7) Alternative loss reserve.

(A) Election. With respect to any eligible calendar quarter, any qualified high loss reserve PCL may elect to have the requirements of this paragraph apply in lieu of the requirements of paragraphs (2) and (4) for such quarter.

(B) Contributions.

(i) Ordinary rules inapplicable. Except as provided under clause (ii) and paragraph (5), a qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to a calendar quarter shall not be required to make contributions to its loss reserve during such quarter.

(ii) Based on loss. A qualified high loss reserve PCL that makes the election described in subparagraph (A) with respect to any calendar quarter shall, before the last day of such quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the PCL is—

(I) not less than $100,000; and

(II) sufficient, as determined by a qualified independent auditor, for the PCL to meet its obligations to protect the Federal Government from risk of loss.

(iii) Certification. Before the end of any calendar quarter for which an election is in effect under subparagraph (A), the head of the PCL shall submit to the Administrator a certification that the loss reserve of the PCL is sufficient to meet such PCL's obligation to protect the Federal Government from risk of loss. Such certification shall be in such form and submitted in such manner as the Administrator may require and shall be signed by the head of such PCL and the auditor making the determination under clause (ii)(II).

(C) Disbursements.

(i) Ordinary rule inapplicable. Paragraph (6) shall not apply with respect to any qualified high loss reserve PCL for any calendar quarter for which an election is in effect under subparagraph (A).

(ii) Excess funds. At the end of each calendar quarter for which an election is in effect under subparagraph (A), the Administration shall allow the qualified high loss reserve PCL to withdraw from its loss reserve the excess of—

(I) the amount of the loss reserve, over

(II) the greater of $100,000 or the amount which is determined under subparagraph (B)(ii) to be sufficient to meet the PCL's obligation to protect the Federal Government from risk of loss.

(D) Recontribution. If the requirements of this paragraph apply to a qualified high loss reserve PCL for any calendar quarter and cease to apply to such PCL for any subsequent calendar quarter, such PCL shall make a contribution to its loss reserve in such amount as the Administrator may determine provided that such amount does not exceed the amount which would result in the total amount in the loss reserve being equal to the amount which would have been in such loss reserve had this paragraph never applied to such PCL. The Administrator may require that such payment be made as a single payment or as a series of payments.

(E) Risk management. If a qualified high loss reserve PCL fails to meet the requirement of subparagraph (F)(iii) during any period for which an election is in effect under subparagraph (A) and such failure continues for 180 days, the requirements of paragraphs

(2), (4), and (6) shall apply to such PCL as of the end of such 180-day period and such PCL shall make the contribution to its loss reserve described in subparagraph (D). The Administrator may waive the requirements of this subparagraph.

(F) Qualified high loss reserve PCL. The term "qualified high loss reserve PCL" means, with respect to any calendar year, any premier certified lender designated by the Administrator as a qualified high loss reserve PCL for such year. The Administrator shall not designate a company under the preceding sentence unless the Administrator determines that—

(i) the amount of the loss reserve of the company is not less than $100,000;

(ii) the company has established and is utilizing an appropriate and effective process for analyzing the risk of loss associated with its portfolio of PCLP loans and for grading each PCLP loan made by the company on the basis of the risk of loss associated with such loan; and

(iii) the company meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administration or the Administration has issued a waiver with respect to the requirement of this clause.

(G) Specified risk management benchmarks. For purposes of this paragraph, the term "specified risk management benchmarks" means the following rates, as determined by the Administrator:

(i) Currency rate.

(ii) Delinquency rate.

(iii) Default rate.

(iv) Liquidation rate.

(v) Loss rate.

(H) Qualified independent auditor. For purpose of this paragraph, the term "qualified independent auditor" means any auditor who—

(i) is compensated by the qualified high loss reserve PCL;

(ii) is independent of such PCL; and

(iii) has been approved by the Administrator during the preceding year.

(I) PCLP loan. For purposes of this paragraph, the term "PCLP loan" means any loan guaranteed under this section.

(J) Eligible calendar quarter. For purposes of this paragraph, the term "eligible calendar quarter" means—

(i) the first calendar quarter that begins after the end of the 90-day period beginning with the date of the enactment of this paragraph [enacted May 28, 2004]; and

(ii) the 7 succeeding calendar quarters.

(K) Calendar quarter. For purposes of this paragraph, the term "calendar quarter" means—

(i) the period which begins on January 1 and ends on March 31 of each year;

(ii) the period which begins on April 1 and ends on June 30 of each year;

(iii) the period which begins on July 1 and ends on September 30 of each year; and

(iv) the period which begins on October 1 and ends on December 31 of each year.

(L) Regulations. Not later than 45 days after the date of the enactment of this paragraph [enacted May 28, 2004], the Administrator shall publish in the Federal Register and transmit to the Congress regulations to carry out this paragraph. Such regulations shall include provisions relating to--

(i) the approval of auditors under subparagraph (H); and

(ii) the designation of qualified high loss reserve PCLs under subparagraph (F), including the determination of whether a process for analyzing risk of loss is appropriate and effective for purposes of subparagraph (F)(ii).

(8) Bureau of PCLP Oversight.

(A) Establishment. There is hereby established in the Small Business Administration a bureau to be known as the Bureau of PCLP Oversight.

(B) Purpose. The Bureau of PCLP Oversight shall carry out such functions of the Administration under this subsection as the Administrator may designate.

(C) Deadline. Not later than 90 days after the date of the enactment of this Act—

(i) the Administrator shall ensure that the Bureau of PCLP Oversight is prepared to carry out any functions designated under subparagraph (B), and

(ii) the Office of the Inspector General of the Administration shall report to the Congress on the preparedness of the Bureau of PCLP Oversight to carry out such functions.

(d) Sale of certain defaulted loans.

(1) Notice. If, upon default in repayment, the Administration acquires a loan guaranteed under this section and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice thereof to any certified development company which has a contingent liability under this section. The notice shall be given to the company as soon as possible after the financing is identified, but not less than 90 days before the date the Administration first makes any records on such financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

(2) Limitations. The Administration shall not offer any loan described in paragraph (1) as part of a bulk sale unless it—

(A) provides prospective purchasers with the opportunity to examine the Administration’s records with respect to such loan; and

(B) provides the notice required by paragraph (1).

(e) Loan approval authority.

(1) In general. Notwithstanding section 503(b)(6) [*15 USCS § 697(b)(6)*], and subject to such terms and conditions as the Administration may establish, the Administration may permit a company designated as a premier certified lender under this section to approve, authorize, close, service, foreclose, litigate (except that the Administration may monitor the conduct of any such litigation to which a premier certified lender is a party), and liquidate loans that are funded with the proceeds of a debenture issued by such company and may authorize the guarantee of such debenture.

(2) Scope of review. The approval of a loan by a premier certified lender shall be subject to final approval as to eligibility of any guarantee by the Administration pursuant to section 503(a) [*15 USCS § 697(a)*], but such final approval shall not include review of decisions by the lender involving creditworthiness, loan closing, or compliance with legal requirements imposed by law or regulation.

(f) Review. After the issuance and sale of debentures under this section, the Administration, at intervals not greater than 12 months, shall review the financings made by each premier certified lender. The review shall include the lender's credit decisions and general compliance with the eligibility requirements for each financing approved under the program authorized under this section. The Administration shall consider the findings of the review in carrying out its responsibilities under subsection (g), but such review shall not affect any outstanding debenture guarantee.

(g) Suspension or revocation. The designation of a certified development company as a premier certified lender may be suspended or revoked if the Administration determines that the company—

(1) has not continued to meet the criteria for eligibility under subsection (b);

(2) has not established or maintained the loss reserve required under subsection (c);

(3) is failing to adhere to the Administration's rules and regulations; or

(4) is violating any other applicable provision of law.

(h) Effect of suspension or revocation. A suspension or revocation under subsection (g) shall not affect any outstanding debenture guarantee.

(i) Program goals. Each certified development company participating in the program under this section shall establish a goal of processing a minimum of not less than 50 percent of the loan applications for assistance under section 504 [*15 USCS § 697a*] pursuant to the program authorized under this section.

(j) Report. Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Administration shall report to the Committees on Small Business of the Senate and the House of Representatives on the implementation of this section. Each report shall include—

(1) the number of certified development companies designated as premier certified lenders;

(2) the debenture guarantee volume of such companies;

(3) a comparison of the loss rate for premier certified lenders to the loss rate for accredited and other lenders, specifically comparing default rates and recovery rates on liquidations; and

(4) such other information as the Administration deems appropriate.

History

HISTORY:

Aug. 21, 1958, *P. L. 85-699*, Title V, § 508, as added Oct. 22, 1994, *P. L. 103-403*, Title II, § 217(a), *108 Stat. 4185*; Dec. 2, 1997, *P. L. 105-135*, Title II, Subtitle C, § 223(a), *111 Stat. 2604*; Dec. 21, 2000, *P. L. 106-554*, § 1(a)(9), *114 Stat. 2763*; May 28, 2004, *P. L. 108-232*, §§ 2, 3(a)–(c), *118 Stat. 649*.

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§ 120.440 How does a 7(a) Lender obtain delegated authority?

(a) In making its decision to grant or renew a delegated authority, SBA considers whether the Lender, as determined by SBA in its discretion:

(1) Has the continuing ability to evaluate, process, close, disburse, service, liquidate and litigate SBA loans. This includes the ability to develop and analyze complete loan packages. SBA may consider the experience and capability of Lender's management and staff.

(2) Has satisfactory SBA performance (as defined in § 120.410(a)(2));

(3) Is in compliance with SBA Loan Program Requirements (e.g., Form 1502 reporting, timely payment of all fees to SBA);

(4) Has completed to SBA's satisfaction all required corrective actions;

(5) Whether Lender is subject to any enforcement action, order or agreement with a regulator or the presence of other regulatory concerns as determined by SBA; and

(6) Whether Lender exhibits other risk factors (e.g., has rapid growth; low SBA activity; SBA loan volume; Lender, an officer or director is under investigation or indictment).

(b) Delegated authority decisions are made by the appropriate SBA official in accordance with Delegations of Authority, and are final.

(c) If delegated authority is approved or renewed, Lender must execute a Supplemental Guarantee Agreement, which will specify a term not to exceed two years. SBA may grant shortened renewals based on risk or any of the other delegated authority criteria. Lenders with less than 3 years of SBA lending experience will be limited to a term of 1 year or less.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*61 FR 3226*, 3248, Jan. 31, 1996, as corrected at *61 FR 7985*, 7986, Mar. 1, 1996; *72 FR 18349*, 18360, Apr. 12, 2007; *82 FR 39491*, 39503, Aug. 21, 2017; *85 FR 80581*, 80588, Dec. 14, 2020]

Annotations

Notes

[EFFECTIVE DATE NOTE:

82 FR 39491 , 39503, Aug. 21, 2017, revised this section, effective Sept. 20, 2017; *85 FR 7622* , 7648, Feb. 10, 2020, revised paragraph (c), effective Mar. 11, 2020; *85 FR 80581*, 80588, Dec. 14, 2020, revised paragraph (c), effective Mar. 27, 2020.]

Research References & Practice Aids

Hierarchy Notes:

13 CFR Ch. I

13 CFR Ch. I, Pt. 120

End of Document

13 CFR 120.1000

This document is current through the June 13, 2022 issue of the Federal Register, with the exception of the amendments appearing at 87 FR 34131, 87 FR 34154, 87 FR 35660, and 87 FR 35675.

Code of Federal Regulations > Title 13 Business Credit and Assistance > Chapter I — Small Business Administration > Part 120 — Business Loans > Subpart I — Risk-Based Lender Oversight > Supervision

§ 120.1000 Risk-Based Lender Oversight.

(a) Risk-Based Lender Oversight. SBA monitors, supervises, examines, regulates, and enforces laws against SBA Supervised Lenders and the SBA operations of SBA Lenders and Intermediaries.

(b) Scope. Most rules and standards set forth in this subpart apply to SBA Lenders as well as Intermediaries; however, SBA has separate regulations for enforcement grounds and formal enforcement actions for Intermediaries at §§ 120.1425 and 120.1540.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*73 FR 75498*, 75519, Dec. 11, 2008; *85 FR 14772*, 14781, Mar. 16, 2020, amended this section, effective Apr. 15, 2020]

Annotations

Notes

[EFFECTIVE DATE NOTE:

73 FR 75498 , 75519, Dec. 11, 2008, added this section, effective Jan. 12, 2009; *85 FR 14772* , 14781, Mar. 16, 2020, revised this section, effective Apr. 15, 2020.]

Research References & Practice Aids

Hierarchy Notes:

13 CFR Ch. I

13 CFR Ch. I, Pt. 120

End of Document

This document is current through the June 13, 2022 issue of the Federal Register, with the exception of the amendments appearing at 87 FR 34131, 87 FR 34154, 87 FR 35660, and 87 FR 35675.

Code of Federal Regulations > Title 13 Business Credit and Assistance > Chapter I — Small Business Administration > Part 120 — Business Loans > Subpart I — Risk-Based Lender Oversight > Supervision

§ 120.1025 Monitoring.

SBA may conduct monitoring of SBA Lenders and Intermediaries including, but not limited to, SBA Lenders' or Intermediaries' self-assessments.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*73 FR 75498*, 75519, Dec. 11, 2008; *82 FR 39491*, 39504, Aug. 21, 2017; *85 FR 14772*, 14781, Mar. 16, 2020]

Annotations

Notes

[EFFECTIVE DATE NOTE:

73 FR 75498 , 75519, Dec. 11, 2008, added this section, effective Jan. 12, 2009; *82 FR 39491* , 39504, Aug. 21, 2017, amended this section, Sept. 20, 2017; *85 FR 14772* , 14781, Mar. 16, 2020, revised this section, effective Apr. 15, 2020.]

Research References & Practice Aids

Hierarchy Notes:

13 CFR Ch. I

13 CFR Ch. I, Pt. 120

This document is current through the June 13, 2022 issue of the Federal Register, with the exception of the amendments appearing at 87 FR 34131, 87 FR 34154, 87 FR 35660, and 87 FR 35675.

§ 120.1050 Reviews and examinations.

(a) reviews. SBA may conduct reviews of the SBA loan operations of SBA Lenders. The review may include, but is not limited to, an evaluation of the following:

(1) Portfolio performance;

(2) SBA operations management;

(3) Credit administration; and

(4) Compliance with Loan Program Requirements.

(b) examinations. SBA may conduct safety and soundness examinations of SBA Supervised Lenders, except SBA will not conduct safety and soundness examinations of Other Regulated SBLCs under §§ 120.1510 and 1511. The safety and soundness examination may include, but is not limited to, an evaluation of:

(1) Capital adequacy;

(2) Asset quality (including credit administration and allowance for loan losses);

(3) Management quality (including internal controls, loan portfolio management, and asset/liability management);

(4) Earnings;

(5) Liquidity; and

(6) Compliance with Loan Program Requirements.

(c) reviews/examinations of Intermediaries SBA may perform reviews or examinations of Intermediaries.

(d) Other reviews or examinations. SBA may perform other reviews/examinations as needed as determined by SBA in its discretion.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*73 FR 75498*, 75519, Dec. 11, 2008; *82 FR 39491*, 39504, Aug. 21, 2017; *85 FR 14772*, 14781, Mar. 16, 2020]

Annotations

Notes

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Research References & Practice Aids

Hierarchy Notes:

13 CFR Ch. I

13 CFR Ch. I, Pt. 120

End of Document

This document is current through the June 13, 2022 issue of the Federal Register, with the exception of the amendments appearing at 87 FR 34131, 87 FR 34154, 87 FR 35660, and 87 FR 35675.

§ 120.1055 Review and examination results.

(a) Written Reports. SBA will provide an SBA Lender and Intermediary a copy of SBA's written report prepared as a result of the SBA Lender or Intermediary review or examination ("Report"). SBA will provide the Report generally within 60 business days following SBA's conclusion of the review/examination unless SBA notifies the SBA Lender or Intermediary of a later date and the reason for the delay. The Report may contain findings, conclusions, corrective actions, and recommendations. Each director (or manager, in the absence of a Board of Directors) of the SBA Lender or Intermediary, in keeping with his or her responsibilities, must become fully informed regarding the contents of the Report.

(b) Response to review and examination Reports. SBA Lenders and Intermediaries must respond to Report findings, recommendations, and corrective actions, if any, in writing to SBA and, if requested, submit proposed corrective actions and/or a capital restoration plan. An SBA Lender or Intermediary must respond within 45 business days from the date the Report is received unless SBA notifies the SBA Lender or Intermediary in writing that the response, proposed corrective actions or capital restoration plan is to be filed within a different time period (either shortened or extended in SBA's discretion). The SBA Lender or Intermediary response must address each finding, recommendation, and corrective action. In proposing a corrective action or capital restoration plan, the SBA Lender or Intermediary must detail the steps it will take to correct the finding(s); the time within which each step will be taken; the timeframe for accomplishing the entire corrective action plan; and the person(s) or department at the SBA Lender or Intermediary charged with carrying out the corrective action or capital restoration plan, as applicable. In addition, SBA Lenders and Intermediaries must implement corrective actions within 90 calendar days from the date the Report or SBA's letter requiring corrective action is received, unless SBA provides written notice of another timeframe. For purposes of this paragraph (b), a Report will be deemed to have been received on the date it was emailed to the last known email address of the SBA Lender or Intermediary unless the SBA Lender or Intermediary can provide compelling evidence to the contrary.

(c) SBA response. SBA will provide written notice of whether the response and, if applicable, any corrective action or capital restoration plan, is approved, or whether SBA will seek additional information or require other action.

(d) Failure to respond or to submit or implement an acceptable plan. If an SBA Lender or Intermediary fails to respond in writing to SBA, respond timely to SBA, or provide a response acceptable to SBA within SBA's discretion, or respond to all findings and required corrective actions in a Report, then SBA may take enforcement action under this subpart. If an SBA Lender or Intermediary that is requested to submit a corrective action plan or capital restoration plan to SBA fails to do so in writing; fails to submit timely such plan to SBA; or fails to submit a plan acceptable to SBA within SBA's discretion, then SBA may take enforcement action under this subpart. If an SBA Lender or Intermediary fails to implement in any material respect a corrective action or capital restoration plan within the required timeframe, then SBA may undertake enforcement action under this subpart.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*73 FR 75498*, 75519, Dec. 11, 2008; *85 FR 14772*, 14781, Mar. 16, 2020]

Annotations

Notes

[EFFECTIVE DATE NOTE:

73 FR 75498 , 75519, Dec. 11, 2008, added this section, effective Jan. 12, 2009; *85 FR 14772* , 14781, Mar. 16, 2020, amended this section, effective Apr. 15, 2020.]

Research References & Practice Aids

Hierarchy Notes:

13 CFR Ch. I

13 CFR Ch. I, Pt. 120

End of Document

13 CFR 120.180

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Code of Federal Regulations > Title 13 Business Credit and Assistance > Chapter I — Small Business Administration > Part 120 — Business Loans > Subpart A — Policies Applying to All Business Loans > Applicability and Enforceability of Loan Program Requirements

§ 120.180 Compliance with Loan Program Requirements.

SBA Lenders and Intermediaries must comply and maintain familiarity with Loan Program Requirements for the 7(a) Loan Program, 504 Loan Program, and the Microloan Program, as applicable, and as such requirements are revised from time to time. Loan Program Requirements in effect at the time that an SBA Lender or Intermediary takes an action in connection with a particular loan govern that specific action. For example, although loan closing requirements in effect when an SBA Lender closes a loan will govern the closing actions, an SBA Lender's liquidation actions on the same loan are subject to the liquidation requirements in effect at the time that a liquidation action is taken. An SBA Lender or Intermediary must maintain sufficient documentation to demonstrate that Loan Program Requirements have been satisfied.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*61 FR 3226*, 3242, Jan. 31, 1996; *72 FR 18349*, 18360, Apr. 12, 2007; *85 FR 14772*, 14781, Mar. 16, 2020]

Annotations

Notes

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72 FR 18349 , 18360, Apr. 12, 2007, revised this section, effective May 14, 2007; *85 FR 14772* , 14781, Mar. 16, 2020, revised this section, effective Apr. 15, 2020.]

Research References & Practice Aids

Hierarchy Notes:

13 CFR Ch. I

13 CFR Ch. I, Pt. 120

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13 CFR 120.461

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Code of Federal Regulations **>** ***Title 13 Business Credit and Assistance*** **>** ***Chapter I — Small Business Administration*** **>** ***Part 120 — Business Loans*** **>** ***Subpart D — Lenders*** **>** ***Sba Supervised Lenders***

§ 120.461 What are SBA's additional requirements for SBA Supervised Lenders concerning records?

(a) Report filing. All SBA Supervised Lender-specific reports (including all SBLC-only reports) must be filed with the appropriate Office of Capital Access official in accordance with Delegations of Authority.

(b) Maintenance of records. An SBA Supervised Lender must maintain at its principal business office accurate and current financial records, including books of accounts, minutes of stockholder, directors, and executive committee meetings, and all documents and supporting materials relating to the SBA Supervised Lender's transactions. However, securities held by a custodian pursuant to a written agreement are exempt from this requirement.

(c) Permanent preservation of records. An SBA Supervised Lender must permanently preserve in a manner permitting immediate (one business day) retrieval the following documentation for the financial statements and other reports required by § 120.464 (and the accompanying certified public accountant's opinion):

(1) All general and subsidiary ledgers (or other records) reflecting asset, liability, capital stock and additional paid-in capital, income, and expense accounts;

(2) All general and special journals (or other records forming the basis for entries in such ledgers); and

(3) The corporate charter, bylaws, application for determination of eligibility to participate with SBA, and all minutes books, capital stock certificates or stubs, stock ledgers, and stock transfer registers.

(d) Other preservation of records. An SBA Supervised Lender must preserve for at least 6 years following final disposition of each individual SBA loan:

(1) All applications for financing;

(2) Lending, participation, and escrow agreements;

(3) Financing instruments; and

(4) All other documents and supporting material relating to such loans, including correspondence.

(e) Electronic preservation. Records and other documents referred to in this section may be preserved electronically if the original is available for retrieval within 15 working days.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*73 FR 75498*, 75512, Dec. 11, 2008]

Annotations

Notes

[EFFECTIVE DATE NOTE:

73 FR 75498, 75512, Dec. 11, 2008, added this section, effective Jan. 12, 2009.]

Research References & Practice Aids

Hierarchy Notes:

13 CFR Ch. I

13 CFR Ch. I, Pt. 120

End of Document

This document is current through the June 13, 2022 issue of the Federal Register, with the exception of the amendments appearing at 87 FR 34131, 87 FR 34154, 87 FR 35660, and 87 FR 35675.

§ 120.464 Reports to SBA.

(a) An SBA Supervised Lender must submit the following to SBA:

(1) Annual Report. Within three months after the close of each fiscal year, each SBA Supervised Lender must submit to SBA two copies of an annual report including audited financial statements as prepared by a certified public accountant in accordance with § 120.463. Specifically, the annual report must, at a minimum, include the following:

(i) Audited balance sheet;

(ii) Audited statement of income and expense;

(iii) Audited reconciliation of capital accounts;

(iv) Audited source and application of funds;

(v) Such footnotes as are necessary to an understanding of the report;

(vi) Auditor's letter to management on internal control weaknesses; and

(vii) The auditor's report.

(2) Quarterly Condition Reports. By the 45th calendar day following the end of each calendar quarter, each SBA Supervised Lender must submit a Quarterly Condition Report in a form and content as the SBA may prescribe from time to time. At a minimum, the Quarterly Condition Report must include the SBA Supervised Lender's quarterly financial statements, which may be internally prepared. The SBA Supervised Lender must apply uniform definitions to categories of nonperforming loans and include recovery amounts on liquidated loans. SBA may, on a case-by-case basis, depending on an SBA Supervised Lender's size and the quality of its assets, adjust the requirements for content and frequency of filing Quarterly Condition Reports.

(3) Legal and Administrative Proceeding Report. Each SBA Supervised Lender must report any legal or administrative proceeding by or against the SBA Supervised Lender, or against any officer, director or employee of the SBA Supervised Lender for an alleged breach of official duty, within ten business days after initiating or learning of the proceeding, and also must notify the SBA of the terms of any settlement or final judgment. The SBA Supervised Lender must include such information in any reporting required under other provisions of SBA regulations.

(4) Stockholder Reports. Each SBA Supervised Lender must submit to SBA a copy of any report furnished to its stockholders in any manner, within 30 calendar days after submission to stockholders, including any prospectus, letter, or other document, concerning the financial operations or condition of the SBA Supervised Lender.

(5) Reports of Changes. Each SBA Supervised Lender must submit to SBA a summary of any changes in the SBA Supervised Lender's organization or financing (within 30 calendar days of the change), such as:

(i) Any change in its name, address or telephone number;

(ii) Any change in its charter, bylaws, or its officers or directors (to be accompanied by a statement of personal history on the form approved by SBA);

(iii) Any change in capitalization, including such types of change as are identified in this part 120;

(iv) Any changes affecting an SBA Supervised Lender's eligibility to continue to participate as an SBA Supervised Lender; and

(v) Notice of any pledge of stock (within 30 calendar days of the transaction) if 10 percent or more of the stock is pledged by any person (or group of persons acting in concert) as collateral for indebtedness.

(6) Report of Changes in Financial Condition. In addition to other reports required under this part 120, each SBA Supervised Lender must submit a report to SBA on any material change in financial condition. The SBA Supervised Lender must submit such report promptly, but no later than ten days after its management becomes aware of such change (except as provided for in § 120.462(d)). Failure to promptly notify SBA concerning a material change in financial condition may lead to enforcement action.

(7) Other Reports. Each SBA Supervised Lender must submit such other reports as SBA from time to time may in writing require.

(b) Preparing financial reports for filing. Each SBA Supervised Lender must prepare financial reports:

(1) In accordance with all applicable laws, regulations, procedures, standards, and such instructions and specifications and in such form and media format as may be prescribed by SBA from time to time;

(2) On an accrual basis, in accordance with GAAP principles and such other accounting requirements, standards, and procedures as may be prescribed by the SBA from time to time;

(3) That contain all applicable footnotes in accordance with GAAP principals, one of which includes a brief analysis of how the SBA Supervised Lender complies with SBA's capital regulations, as applicable; and

(4) In such manner as to facilitate the reconciliation of these reports with the books and records of the SBA Supervised Lender.

(c) Responsibility for assuring the accuracy of filed financial reports. Each financial report filed with SBA must be certified as having been prepared in accordance with all applicable regulations, SOPs, notices, and instructions and to be a true, accurate, and complete representation of the financial condition and financial performance of the SBA Supervised Lender to which it applies. The reports must be certified by the officer of the reporting SBA Supervised Lender named for that purpose by action of the institution's board of directors. If the institution's board of directors has not acted to name an officer to certify the correctness of its reports of financial condition and financial performance, then the reports must be certified by the president or chief executive officer of the reporting SBA Supervised Lender.

(d) Waiver. The appropriate Office of Capital Access official in accordance with Delegations of Authority may in his/her discretion waive any § 120.464 reporting requirement for SBA Supervised Lenders for good cause (including, but not limited to, where an SBA Supervised Lender has a relatively small SBA loan portfolio), as determined by SBA. SBA Supervised Lenders must request the waiver in writing and include all supporting reasons and documentation. The waiver decision of the appropriate Office of Capital Access official in accordance with Delegations of Authority is final.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*73 FR 75498*, 75514, Dec. 11, 2008]

Annotations

Notes

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Research References & Practice Aids

Hierarchy Notes:

13 CFR Ch. I

13 CFR Ch. I, Pt. 120

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13 CFR 120.830

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Code of Federal Regulations > Title 13 Business Credit and Assistance > Chapter I — Small Business Administration > Part 120 — Business Loans > Subpart H — Development Company Loan Program (504) > Requirements for CDC Certification and Operation

§ 120.830 Reports a CDC must submit.

A CDC must submit the following reports to SBA:

(a) An Annual Report within one hundred-eighty days after the end of the CDC's fiscal year (to include Federal tax returns for that year). A CDC that is certified by SBA within 6 months of the CDC's fiscal year-end is not required to submit an Annual Report for that year. The Annual Report must include, but is not limited to, the following:

(1) Audited or Reviewed Financial Statements as required in § 120.826(c) and (d) for the CDC and any affiliates or subsidiaries of the CDC.

(i) Audited financial statements must, at a minimum, include the following:

(A) Audited balance sheet;

(B) Audited statement of income (or receipts) and expenses;

(C) Audited statement of source and application of funds;

(D) Such footnotes as are necessary to an understanding of the financial statements;

(E) Auditor's letter to management on internal control weaknesses; and

(F) The auditor's report; and

(ii) Reviewed financial statements must, at a minimum, include the following:

(A) Balance sheet;

(B) Statement of income (or receipts) and expenses;

(C) Statement of source and application of funds;

(D) Such footnotes as are necessary to an understanding of the financial statements;

(E) The accountant's review report; and

(2) Report on compensation: CDCs are required to provide detailed information on total compensation (including salary, bonuses and expenses) paid within the CDC's most recent tax year for current and former officers and directors, and for current and former employees and independent contractors with total compensation of more than $ 100,000 during that period.

(3) Certification of members of the Board of Directors. Written annual certification by each Board member that he or she has read and understands the requirements set forth in § 120.823.

(4) Report on investment in economic development. Written report on investments in economic development in each State in which the CDC has an outstanding 504 loan.

(b) For each new associate and staff, a Statement of Personal History (for use by non-bank lenders and CDCs) and other information required by SBA;

(c) Reports of involvement in any legal proceeding;

(d) Changes in organizational status;

(e) Changes in any condition that affects its eligibility to continue to participate in the 504 program; and

(f) Quarterly service reports on each loan in its portfolio which is 60 days or more past due (and interim reports upon request by SBA).

(g) Other reports as required by SBA.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*61 FR 3226*, 3259, Jan. 31, 1996; *68 FR 57960*, 57981, Oct. 7, 2003; *73 FR 75498*, 75518, Dec. 11, 2008; *79 FR 15641*, 15651, Mar. 21, 2014]

Annotations

Notes

[EFFECTIVE DATE NOTE:

79 FR 15641, 15651, Mar. 21, 2014, revised paragraph (a), effective Apr. 21, 2014.]

Research References & Practice Aids

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13 CFR Ch. I

13 CFR Ch. I, Pt. 120

13 CFR 120.1010

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Code of Federal Regulations > Title 13 Business Credit and Assistance > Chapter I — Small Business Administration > Part 120 — Business Loans > Subpart I — Risk-Based Lender Oversight > Supervision

§ 120.1010 SBA access to SBA Lender, Intermediary, and NTAP files.

An SBA Lender and Intermediary must allow SBA's authorized representatives, including representatives authorized by the SBA Inspector General, during normal business hours, access to its files to review, inspect, and copy all records and documents, relating to SBA guaranteed loans or as requested for SBA oversight.

Statutory Authority

Authority Note Applicable to 13 CFR Ch. I, Pt. 120

History

[*73 FR 75498*, 75519, Dec. 11, 2008; *85 FR 14772*, 14781, Mar. 16, 2020]

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Research References & Practice Aids

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13 CFR Ch. I

13 CFR Ch. I, Pt. 120

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