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(Original Signature of Member)

111TH CONGRESS
1ST SESSION

H. R. _____

To enact title 53, United States Code, ''Small Business'', as positive law.

IN THE HOUSE OF REPRESENTATIVES

, 2009

Mr. CONYERS (for himself and _____) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To enact title 53, United States Code, ''Small Business'', as positive law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Table of contents.
Sec. 2. Purpose; conformity with original intent.
Sec. 3. Enactment of title 53, United States Code.
Sec. 4. Conforming amendments to positive law provisions of the United States Code.
Sec. 5. Conforming amendments to non-positive law provisions of the United States Code.
Sec. 6. Transitional and savings provisions.
Sec. 7. Repeals.

SEC. 2. PURPOSE; CONFORMITY WITH ORIGINAL INTENT.

(a) PURPOSE.—The purpose of this Act is to codify certain existing laws relating to small business as a positive law title of the United States Code.

(b) CONFORMITY WITH ORIGINAL INTENT.—In the codification of laws by this Act, the intent is to conform to the understood policy, intent, and purpose of Congress in the original enactments, with such amendments and corrections as will remove ambiguities, contradictions, and other imperfections, in accordance with section 205(c)(1) of House Resolution No. 988, 93d Congress, as enacted into law by Public Law 93–554 (2 U.S.C. 285b(1)).

SEC. 3. ENACTMENT OF TITLE 53, UNITED STATES CODE.

Title 53, United States Code, ''Small Business'', is enacted as follows:

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1 # Subtitle I—General Provisions

2 ## CHAPTER 101—DEFINITIONS AND DECLARATIONS

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3 **§ 10101. Definitions**

4 In this title:

(1) ACCREDITED LENDERS PROGRAM.—The term ''accredited lenders program'' means the program under section 33107 of this title.

(2) ACTIVATED.—The term ''activated'', with respect to a reservist, means having received an order placing the reservist on active duty.

(3) ACTIVE DUTY.—The term ''active duty'' has the meaning given the term in section 101 of title 10.

(4) ADMINISTRATION.—The term ''Administration'' means the Small Business Administration.

(5) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Small Business Administration.

(6) AGRICULTURAL COMMODITY.—The term ''agricultural commodity'' has the meaning given the term in section 102 of the Agricultural Trade Act of 1978 (7 U.S.C. 5602).

(7) AGRICULTURAL ENTERPRISE.—The term ''agricultural enterprise'' means a business engaged in—

(A) the production of food or fiber;

(B) ranching;

(C) raising of livestock;

(D) aquaculture; or

(E) any other industry related to agriculture.

(8) ALASKA NATIVE CORPORATION.—The term ''Alaska Native Corporation'' has the meaning given the term ''Native Corporation'' in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(9) ALASKA NATIVE VILLAGE.—The term ''Alaska Native Village'' has the meaning given the term ''Native village'' in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(10) ASSOCIATION.—The term ''Association'' means the association of small business development centers recognized under section 27102(f) of this title.

(11) BASE CLOSURE AREA.—The term ''base closure area'' has the meaning given the term in section 25301 of this title.

(12) BIOMASS.—

(A) IN GENERAL.—The term ''biomass'' means any organic material that is available on a renewable or recurring basis.

(B) INCLUSIONS.—The term ''biomass'' includes—

(i) agricultural crops;

(ii) trees grown for energy production;

(iii) wood waste and wood residues;

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

(v) residues;

(vi) fibers;

(vii) animal wastes and other waste materials; and

(viii) fats, oils, and greases (including recycled fats, oils, and greases).

(C) EXCLUSIONS.—The term ''biomass'' does not include—

(i) paper that is commonly recycled; or

(ii) unsegregated solid waste.

(13) BUNDLED CONTRACT.—The term ''bundled contract'' means a contract that is entered into to meet requirements that are consolidated in a bundling of contract requirements.

(14) BUNDLING OF CONTRACT REQUIREMENTS.—

(A) IN GENERAL.—The term ''bundling of contract requirements'' means consolidating 2 or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business concern due to—

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

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

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

(iv) a combination of the factors described in clauses (i), (ii), and (iii).

(B) SEPARATE SMALLER CONTRACT.—In subparagraph (A), the term ''separate smaller contract'' means a contract that—

(i) has been performed by one or more small business concerns; or

(ii) was suitable for award to one or more small business concerns.

(15) BUSINESS DEVELOPMENT PROGRAM.—The term ''business development program'' means the program under division E of subtitle II.

(16) CERTIFIED DEVELOPMENT COMPANY PROGRAM.—The term ''certified development company program'' means the program under division D of subtitle III.

(17) COMPUTER CRIME.—The term ''computer crime'' means—

(A) a crime committed against a small business concern by means of the use of a computer; and

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

(18) CONTRACTING OFFICER.—The term ''contracting officer'' has the meaning given the term in section 27(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 423(f)).

(19) CREDIT ELSEWHERE.—The term ''credit elsewhere'', with respect to a concern or homeowner, means sufficient credit that is available from a non-Federal source on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near which the concern transacts business or the homeowner resides, for similar purposes and periods of time.

(20) DEFENSE AGENCY.—The term ''defense agency'' has the meaning given the term in section 101 of title 10.

(21) DISABLED INDIVIDUAL.—The term ''disabled individual'' means an individual who—

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

(B) is a service-disabled veteran.

(22) DISABLED VETERAN.—The term ''disabled veteran'' has the meaning given the term in section 4211 of title 38.

(23) DISADVANTAGED OWNER.—The term ''disadvantaged owner'' has the meaning given the term in section 23101 of this title.

(24) DISASTER.—

(A) IN GENERAL.—The term ''disaster'' means a sudden event that causes severe damage.

(B) INCLUSIONS.—The term ''disaster'' includes a flood, hurricane, tornado, earthquake, fire, explosion, volcano, windstorm, landslide or mudslide, tidal wave, commercial fishery failure or fishery resource disaster (as determined by the Secretary of Commerce under section 308(b) of the Interjurisdictional Fisheries Act of 1986 (16 U.S.C. 4107(b))), ocean condition resulting in the closure of customary fishing water, riot, civil disorder, or other catastrophe.

(C) EXCLUSION.—The term ''disaster'' does not include an economic dislocation.

(25) DISASTER AREA.—The term ''disaster area'' means an area affected by a natural or other disaster, as determined for purposes of section 21301 or 21302 of this title, during the period of the declaration.

(26) DISASTER ASSISTANCE PROGRAM.—The term ''disaster assistance program'' means—

(A) the disaster loan program;

(B) the private disaster assistance program;

(C) the immediate disaster assistance program; and

(D) the expedited disaster assistance business loan guarantee program.

(27) DISASTER LOAN PROGRAM.—The term ''disaster loan program'' means the program under chapter 213.

(28) ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—The term ''economically disadvantaged Indian tribe'' has the meaning given the term in section 23101 of this title.

(29) ENERGY EFFICIENCY PROJECT.—The term ''energy efficiency project'' means the installation or upgrading of equipment that results in a significant reduction in energy usage.

(30) ENERGY MEASURE.—The term ''energy measure'' includes—

(A) solar thermal energy equipment that is—

(i) of the active type based on mechanically forced energy transfer;

(ii) of the passive type based on convective, conductive, or radiant energy transfer; or

(iii) a combination of the types described in clauses (i) and (ii);

(B) photovoltaic cells and related equipment;

(C) a product or service—

(i) the primary purpose of which is conservation of energy through a device or technique that increases the energy efficiency of existing equipment, methods of operation, or systems that use fossil fuel; and

(ii) that is on the Energy Conservation Measures list of the Secretary of Energy or that the Administrator determines to be consistent with the intent of this paragraph;

(D) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or another biomass (as defined by the Administrator) source of energy;

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

(F) hydroelectric power equipment;

(G) wind energy conversion equipment; and

(H) an engineering, architectural, consulting, or other professional service that is necessary or appropriate to aid citizens in using any of the measures described in subparagraphs (A) to (G).

(31) EXPEDITED DISASTER ASSISTANCE LOAN GUARANTEE PROGRAM.—The term ''expedited disaster assistance loan guarantee program'' means the program under chapter 219.

(32) EXPORT WORKING CAPITAL PROGRAM.—The term ''export working capital program'' means the program established under section 20508 of this title.

(33) EXPRESS LENDER.—The term ''express lender'' means a lender authorized by the Administrator to participate in the express loan program.

(34) EXPRESS LOAN.—The term ''express loan'' means a loan made pursuant to section 20320 of this title in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(35) EXPRESS LOAN PROGRAM.—The term ''express loan program'' means the program for express loans established by the Administrator under section 7(a)(25)(B) of the Small Business Act (15 U.S.C. 636(a)(25)(B)) (as in existence on April 5, 2004), with a guarantee rate of not more than 50 percent.

(36) FEDERAL AGENCY.—Except in subtitles III and IV:

(A) IN GENERAL.—The term ''Federal agency'' has the meaning given the term ''agency'' in section 551 of title 5.

(B) EXCLUSION.—The term ''Federal agency'' does not include—

(i) the United States Postal Service; or

(ii) the Government Accountability Office.

(37) GENERAL BUSINESS LOAN PROGRAM.—The term ''general business loan program'' means the program under division B of subtitle II.

(38) HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—The term ''historically underutilized business zone'' has the meaning given the term in section 25301 of this title.

(39) HOMEOWNER.—The term ''homeowner'' includes an owner or lessee of residential property (including personal property of the owner or lessee of the residential property).

(40) HUBZONE.—The term ''HUBZone'' has the meaning given the term in section 25301 of this title.

(41) HUBZONE PROGRAM.—The term ''HUBZone program'' means the program under chapter 253.

(42) HUBZONE SMALL BUSINESS CONCERN.—The term ''HUBZone small business concern'' has the meaning given the term in section 25301 of this title.

(43) IMMEDIATE DISASTER ASSISTANCE PROGRAM.—The term ''immediate disaster assistance program'' means the program under chapter 217.

(44) INDIAN RESERVATION.—

(A) IN GENERAL.—The term ''Indian reservation'' has the meaning given the term ''Indian country'' in section 1151 of title 18.

(B) EXCLUSIONS.—The term ''Indian reservation'' does not include—

(i) land located in a State in which an Indian tribe did not exercise governmental jurisdiction on December 21, 2000, unless that Indian tribe is recognized after December 21, 2000, by either an Act of Congress or pursuant to regulations of the Secretary of the Interior for the administrative recognition that an Indian group exists as an Indian tribe (part 83 of title 25, Code of Federal Regulations); or

(ii) land taken into trust or acquired by an Indian tribe after December 21, 2000, if the land—

(I) is not located within the external boundaries of an Indian reservation or former reservation; or

(II) is not contiguous to the land held in trust or restricted status on December 21, 2000.

(C) LAND IN OKLAHOMA.—With respect to land in the State of Oklahoma, the term ''Indian reservation'' means land that—

(i) is within the jurisdictional areas of an Oklahoma Indian tribe (as determined by the Secretary of the Interior); and

(ii) is recognized by the Secretary of the Interior as eligible for trust land status under part 151 of title 25, Code of Federal Regulations (as in effect on December 21, 2000).

(45) MAJOR DISASTER.—The term ''major disaster'' has the meaning given the term in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(46) MAJOR DISASTER AREA.—The term ''major disaster area'' means the area for which a major disaster is declared.

(47) MICROLOAN PROGRAM.—The term ''microloan program'' means the program under chapter 211.

(48) MILITARY DEPARTMENT.—The term ''military department'' has the meaning given the term in section 101 of title 10.

(49) NATIVE HAWAIIAN ORGANIZATION.—The term ''Native Hawaiian organization'' means a community service organization serving Native Hawaiians in the State of Hawaii—

(A) that is a nonprofit corporation that has filed articles of incorporation with the director of the Hawaii Department of Commerce and Consumer Affairs, or any successor agency;

(B) that is controlled by Native Hawaiians; and

(C) the business activities of which will principally benefit Native Hawaiians in the State of Hawaii.

(50) NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM.—The term ''new markets venture capital company program'' means the program under chapter 305.

(51) NON-FEDERALLY REGULATED LENDER.—The term ''non-federally regulated lender'' means a business concern (other than a small business lending company)—

(A) that is authorized by the Administrator to make loans under the general business loan program;

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

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

(52) PREFERRED LENDER.—The term ''preferred lender'' means a lender participating in the preferred lenders program.

(53) PREFERRED LENDERS PROGRAM.—The term ''preferred lenders program'' means the preferred lenders program carried out under section 10332(f)(3) of this title.

(54) PREMIER CERTIFIED LENDERS PROGRAM.—The term ''premier certified lenders program'' means the program under section 33108 of this title.

(55) PRIME PROGRAM.—The term ''PRIME program'' means the program under chapter 401.

(56) PRIVATE DISASTER ASSISTANCE PROGRAM.—The term ''private disaster assistance program'' means the program under chapter 215.

(57) PROCURING AGENCY.—The term ''procuring agency'' means a Federal agency that has procurement power.

(58) PUBLIC OR PRIVATE ORGANIZATION FOR THE DISABLED.—The term ''public or private organization for the disabled'' means an organization—

(A) that is organized under the laws of the United States or of a State;

(B) that is operated in the interest of disabled individuals;

(C) the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

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

(E) that, in the production of commodities and in the provision of services during any fiscal year in which the organization received financial assistance under the general business loan program, employs disabled individuals for not less than 75 percent of the man-hours required for the production or provision of the commodities or services.

(59) QUALIFIED CENSUS TRACT.—The term ''qualified census tract'' has the meaning given the term in section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986 (26 U.S.C. 42(d)(5)(C)(ii)).

(60) QUALIFIED EMPLOYEE TRUST.—The term ''qualified employee trust'' has the meaning given the term in section 20509(a) of this title.

(61) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term ''qualified HUBZone small business concern'' has the meaning given the term in section 25301 of this title.

(62) QUALIFIED INDIAN TRIBE.—The term ''qualified Indian tribe'' means an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)) that owns and controls 100 percent of a small business concern.

(63) QUALIFIED NONMETROPOLITAN COUNTY.—The term ''qualified nonmetropolitan county'' has the meaning given the term in section 25301 of this title.

(64) REDESIGNATED AREA.—The term ''redesignated area'' has the meaning given the term in section 25301 of this title.

(65) RENEWABLE ENERGY SYSTEM.—The term ''renewable energy system'' means a system of energy derived from—

(A) a wind, solar, biomass (including biodiesel), or geothermal source; or

(B) hydrogen derived from biomass or water using an energy source described in subparagraph (A).

(66) RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM.—The term ''renewable fuel capital investment pilot program'' means the program under chapter 307.

(67) RESERVIST.—The term ''reservist'' means a member of a reserve component of the Armed Forces, as described in section 101 of title 10.

(68) SCORE.—The term ''SCORE'' means the volunteer program known as SCORE.

(69) SERVICE-DISABLED VETERAN.—The term ''service-disabled veteran'' means a veteran with a disability that is service-connected (as defined in section 101 of title 38).

(70) SIMPLIFIED ACQUISITION THRESHOLD.—The term ''simplified acquisition threshold'' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(71) SMALL AGRICULTURAL COOPERATIVE.—

(A) IN GENERAL.—The term ''small agricultural cooperative'' means an association (corporate or otherwise) acting pursuant to the Agricultural Marketing Act (12 U.S.C. 1141j) the size of which does not exceed the size standard established by the Administrator for other similar agricultural small business concerns.

(B) SIZE DETERMINATION.—In determining the size of an association described in subparagraph (A), the Administrator—

(i) shall regard the association as a business concern; and

(ii) shall not include the income or employees of any member shareholder of the association.

(72) SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.—The term ''small business competitiveness demonstration program'' means the program under chapter 249.

(73) SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—The term ''small business concern'' means a business concern (including an agricultural enterprise) that—

(i) is independently owned and operated; and

(ii) is not dominant in its field of operation.

(B) INCLUSIONS.—Notwithstanding any other provision of law, an agricultural enterprise that has annual receipts (including receipts of its affiliates) not in excess of $750,000 shall be deemed to be a small business concern.

(C) ESTABLISHMENT OF SIZE STANDARDS.—

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

(ii) ADDITIONAL CRITERIA.—The standards described in clause (i) may use—

(I) number of employees, dollar volume of business, net worth, net income, or a combination thereof; or

(II) other appropriate factors.

(iii) REQUIREMENTS FOR PRESCRIPTION OF SIZE STANDARD.—Unless specifically authorized by statute, no Federal agency may prescribe a size standard for categorizing a busi-

ness concern as a small business concern unless the proposed size standard—

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

(II) provides for determining—

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

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

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

(dd) other appropriate factors; and

(III) is approved by the Administrator.

(iv) FACTORS TO BE CONSIDERED.—In establishing or approving a size standard under this subparagraph, the Administrator shall—

(I) ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries; and

(II) consider other factors that the Administrator considers to be relevant.

(v) LISTING OF ADDITIONAL SIZE STANDARDS.—The Administrator shall prescribe regulations to carry out this subparagraph. The regulations shall include a listing of all small business size standards prescribed by statute or by individual Federal agencies, identifying the programs or purposes to which the size standards apply.

(74) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term ''small business concern owned and controlled by service-disabled veterans'' means a small business concern—

(A) not less than 51 percent of which is owned by one or more service-disabled veterans; and

(B) the management and daily business operations of which are controlled by—

(i) one or more service-disabled veterans; or

(ii) in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of the veteran.

(75) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ''small business concern owned and controlled by socially and economically disadvantaged individuals'' has the meaning given the term in section 23101 of this title.

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

(A) not less than 51 percent of which is owned by one or more veterans; and

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

(77) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY WOMEN.—The term ''small business concern owned and controlled by women'' means a small business concern—

(A)(i) at least 51 percent of which is owned by one or more women; or

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

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

(78) SMALL BUSINESS DEVELOPMENT CENTER.—The term ''small business development center'' means a small business development center that receives financial assistance under chapter 271.

(79) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.—The term ''small business development center program'' means the small business development center program under chapter 271.

(80) SMALL BUSINESS INVESTMENT COMPANY PROGRAM.—The term ''small business investment company program'' means the program under chapter 303.

(81) SMALL BUSINESS LENDING COMPANY.—The term ''small business lending company'' means a business concern—

(A) that is authorized by the Administrator to make loans under the general business loan program; and

(B) the lending activities of which are not subject to regulation by any Federal or State regulatory agency.

(82) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—The term ''socially and economically disadvantaged individual'' has the meaning given the term in section 23101 of this title.

(83) SOCIALLY DISADVANTAGED INDIVIDUAL.—The term ''socially disadvantaged individual'' has the meaning given the term in section 23101 of this title.

(84) SURETY BOND GUARANTEE PROGRAM.—The term ''surety bond guarantee program'' means the program under chapter 321.

(85) UNITED STATES.—The term ''United States'' includes the States, the District of Columbia, Puerto Rico, and the territories and possessions of the United States.

(86) VETERAN.—The term ''veteran'' has the meaning given the term in section 101 of title 38.

(87) WOMEN'S BUSINESS CENTER.—The term ''women's business center'' means a women's business center operating under chapter 273.

(88) WOMEN'S BUSINESS CENTER PROGRAM.—The term ''women's business center program'' means the women's business center program under chapter 273.

§ 10102. Declarations

All declarations of findings, purposes, or policies enacted in connection with the enactment of any source law for this title, as originally enacted, or in connection with any amendment to this title, are incorporated in this title by reference.

CHAPTER 103—SMALL BUSINESS ADMINISTRATION

Subchapter I—Organization

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Subchapter I—Organization

§ 10301. Establishment

(a) IN GENERAL.—There is established to carry out the authorities committed to the Administrator under this title and other law an agency to be known as the Small Business Administration.

(b) INDEPENDENT ESTABLISHMENT.—The Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other Federal agency.

(c) OFFICES.—The principal office of the Administration shall be located in the District of Columbia. The Administrator may establish such branch and regional offices in other places in the United States as the Administrator may determine.

§ 10302. Administrator

(a) IN GENERAL.—The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small business needs and problems.

(b) FULL-TIME POSITION.—The Administrator shall not engage in any business, vocation, or employment other than that of serving as Administrator.

§ 10303. Deputy Administrator

(a) IN GENERAL.—The President may appoint a Deputy Administrator of the Administration, by and with the advice and consent of the Senate.

(b) DUTIES.—The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

§ 10304. Associate Administrators

(a) IN GENERAL.—The Administrator may appoint 5 Associate Administrators (including the Associate Administrator specified in 10306 of this title) to assist in the execution of the functions vested in the Administrator.

(b) ASSOCIATE ADMINISTRATOR FOR VETERANS BUSINESS DEVELOPMENT.—

(1) IN GENERAL.—One Associate Administrator appointed under subsection (a) shall be the Associate Administrator for Veterans Business Development.

(2) POSITION.—The Associate Administrator for Veterans Business Development shall be an appointee in the Senior Executive Service.

(3) REPORTING.—The Associate Administrator for Veterans Business Development shall report to and be responsible directly to the Administrator.

(4) DUTIES.—The Associate Administrator for Veterans Business Development shall administer the Office of Veterans Business Development established under section 10313 of this title.

(c) ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT.—

(1) IN GENERAL.—One of the Associate Administrators shall be designated at the time of appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development.

(2) POSITION.—The Associate Administrator for Minority Small Business and Capital Ownership Development shall be an employee in the competitive service or a career appointee in the Senior Executive Service, and the position of Associate Administrator for Minority Small Business and Capital Ownership Development shall be a career reserved position.

(3) DUTIES.—

(A) FORMULATION AND COORDINATION OF POLICIES.—The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for formulating and coordinating policies relating to Federal assistance to small business concerns eligible for assistance under section 20504 of this title and small business concerns eligible to receive contracts under the business development program.

(B) BUSINESS DEVELOPMENT PROGRAM.—The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible to the Administrator for the formulation, execution, and management of the business development program (including the making of determinations under paragraphs (8), (15), (16), and (17) of section 23101 of this title and sections 23310, 23312(a)(1), and 23318(g) of this title), under the supervision of the Administrator.

(d) ASSOCIATE ADMINISTRATOR FOR SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) APPOINTMENT AND COMPENSATION.—The Administrator shall appoint an Associate Administrator for Small Business Development Centers who shall—

(A) report to an official who is not more than one level below the Office of the Administrator; and

(B) serve without regard to the provisions of title 5 governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, but at a rate not less than the rate of pay for a position classified above GS–15 pursuant to section 5108 of title 5.

(2) DUTIES.—

(A) IN GENERAL.—The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program.

(B) DUTIES INCLUDED.—Duties of the position shall include—

(i) recommending the annual budget for the small business development center program;

(ii) reviewing the annual budgets submitted by each applicant under the small business development center program;

(iii) establishing appropriate funding levels for applicants under the small business development center program;

(iv) selecting applicants to participate in the small business development center program;

(v) implementing chapter 271;

(vi) maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers; and

(vii) conducting audits of recipients of grants under chapter 241.

(3) CONSULTATION.—

(A) IN GENERAL.—In carrying out the duties described in this subsection, the Associate Administrator for Small Business Development Centers shall confer with and seek the advice of the National Small Business Development Center Advisory Board and Administration officials in areas served by the small business development centers.

(B) RESPONSIBILITY.—Notwithstanding subparagraph (A), the Associate Administrator shall be responsible for the management and administration of the program and shall not be subject to the approval or concurrence of Administration officials described in subparagraph (A).

§ 10305. Personnel

(a) IN GENERAL.—The Administrator may, subject to the civil service and classification laws—

(1) select, employ, appoint, and fix the compensation of such officers, employees, attorneys, and agents as are necessary to carry out this title;

(2) define their authority and duties; and

(3) pay the costs of qualification of certain of them as notaries public.

(b) INDIVIDUALS EMPLOYED TO RENDER TEMPORARY SERVICES IN CONNECTION WITH A DISASTER.—

(1) IN GENERAL.—The Administrator may pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel of any individual employed by the Administration to render temporary services not in excess of 6 months in connection with a disaster from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return on completion of the assignment.

(2) EXTENSION OF TERM.—The Administrator may extend the six-month limitation under paragraph (1) for an additional 6 months if the Administrator determines that the extension is necessary to continue efficient disaster loan making activities.

(c) EXPERTS AND CONSULTANTS.—

(1) IN GENERAL.—To such extent as the Administrator finds necessary to carry out this title, the Administrator may procure the temporary (not in excess of one year) or intermittent services of experts or consultants (including stenographic reporting services) by contract or appointment.

(2) INAPPLICABILITY OF OTHER LAW.—Service procured under paragraph (1)—

(A) shall be without regard to the civil service and classification laws; and

(B) except in the case of stenographic reporting services by an organization, shall be without regard to section 3709 of the Revised Statutes (41 U.S.C. 5).

(3) COMPENSATION.—An individual employed under paragraph (1)—

(A) may be compensated at a rate not in excess of the daily equivalent of the maximum rate payable under section 5376 of title 5, including travel time; and

(B) while away from the individual's home or regular place of business, may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5.

§ 10306. Small Business Investment Division

(a) ESTABLISHMENT.—There is established in the Administration a division to be known as the Small Business Investment Division.

(b) ASSOCIATE ADMINISTRATOR.—The Small Business Investment Division shall be headed by an Associate Administrator appointed by the Administrator.

(c) COMPENSATION.—The Associate Administrator shall receive compensation at the rate provided by law for other Associate Administrators of the Administration.

§ 10307. Office of Advocacy

(a) DEFINITIONS.—In this section:

(1) CHIEF COUNSEL.—The term ''Chief Counsel'' means the Chief Counsel for Advocacy appointed under subsection (c).

(2) OFFICE.—The term ''Office'' means the Office of Advocacy established by subsection (b).

(b) ESTABLISHMENT.—There is established within the Administration an Office of Advocacy.

(c) CHIEF COUNSEL FOR ADVOCACY.—The management of the Office shall be vested in a Chief Counsel for Advocacy, who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate.

(d) PRIMARY FUNCTIONS.—The primary functions of the Chief Counsel shall be to—

(1) examine the role of small business in the American economy and the contribution that small business can make in improving competition, encouraging economic and social mobility for all citizens, restraining inflation, spurring production, expanding employment opportunities, increasing productivity, promoting exports, stimulating innovation and entrepreneurship, and providing an avenue through which new and untested products and services can be brought to the marketplace;

(2) assess the effectiveness of Federal subsidy and assistance programs for small business and the desirability of reducing the emphasis on such programs and increasing the emphasis on general assistance programs designed to benefit all small business concerns;

(3)(A) measure the direct costs and other effects of government regulation on small business concerns; and

(B) make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulation of small business concerns;

(4) determine the impact of the tax structure on small business concerns and make legislative and other proposals for altering the tax structure to enable all small business concerns to realize their potential for contributing to the improvement of the Nation's economic well-being;

(5) study the ability of financial markets and institutions to meet small business credit needs and determine the impact of government demands for credit on small business concerns;

(6) determine financial resource availability and recommend methods for delivery of financial assistance to minority enterprises, including methods for—

(A) securing equity capital;

(B) generating markets for goods and services;

(C) providing effective business education, more effective management and technical assistance, and training; and

(D) providing assistance in complying with Federal, State, and local law;

(7) evaluate the efforts of Federal agencies, business, and industry to assist minority business concerns;

(8) make such recommendations as may be appropriate to assist the development and strengthening of minority and other small business concerns;

(9)(A) recommend specific measures for creating an environment in which all businesses will have the opportunity to compete effectively and expand to their full potential; and

(B) ascertain the common reasons, if any, for small business successes and failures;

(10)(A) determine the desirability of developing a set of rational, objective criteria to be used to define small business; and

(B) develop such criteria, if appropriate; and

(11)(A) evaluate the efforts of each Federal agency, and of private industry, to assist small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans;

(B) provide statistical information on the use of such programs by small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans; and

(C) make appropriate recommendations to the Administrator and to Congress to promote the establishment and growth of small business

concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans.

(e) DUTIES TO BE PERFORMED ON A CONTINUING BASIS.—

(1) IN GENERAL.—The Chief Counsel shall perform the duties described in this subsection on a continuing basis.

(2) COMPLAINTS, CRITICISMS, AND SUGGESTIONS.—The Chief Counsel shall serve as a focal point for the receipt of complaints, criticisms, and suggestions concerning the policies and activities of the Administration and any other Federal agency that affects small business concerns.

(3) COUNSELING.—The Chief Counsel shall counsel small business concerns on how to resolve questions and problems concerning the relationship of the small business to the Federal Government.

(4) PROPOSALS FOR CHANGE.—The Chief Counsel shall—

(A) develop proposals for changes in the policies and activities of any Federal agency that will better fulfill the purposes of subtitle II; and

(B) communicate the proposals to the appropriate Federal agencies.

(5) REPRESENTATION OF VIEWS AND INTERESTS.—The Chief Counsel shall represent the views and interests of small business concerns before other Federal agencies the policies and activities of which may affect small business.

(6) DISSEMINATION OF INFORMATION.—The Chief Counsel shall enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating—

(A) information about the programs and services provided by the Federal Government that are of benefit to small business concerns; and

(B) information on how small business concerns can participate in or make use of those programs and services.

(f) RURAL TOURISM TRAINING PROGRAM.—In conjunction with the Office of Rural Affairs and appropriate personnel designated by each district office of the Administration, the Chief Counsel shall conduct training sessions on the types of Federal assistance available for the development of rural small business concerns engaged in tourism and tourism-related activities.

(g) POWERS.—In carrying out this section, the Chief Counsel may—

(1) employ and fix the compensation of such additional staff personnel as the Chief Counsel considers necessary, without regard to the provisions of title 5, governing appointments in the competitive service,

and without regard to chapter 51 or subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates but at rates not in excess of the lowest rate for GS–15 of the General Schedule, except that not more than 14 staff personnel at any one time may be employed and compensated at a rate not in excess of GS–15, step 10, of the General Schedule;

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5;

(3) consult—

(A) with experts and authorities in the fields of small business investment, venture capital, and investment and commercial banking and with other comparable lending institutions involved in the financing of business;

(B) with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community; and

(C) with individuals who generally represent the public interest;

(4)(A) use the services of the National Advisory Council established under section 10315 of this title; and

(B) in accordance with that section, appoint such other advisory boards or committees as the Chief Counsel considers reasonably appropriate and necessary to carry out this section; and

(5) hold hearings and sit and act at such times and places as the Chief Counsel considers advisable.

(h) ASSISTANCE OF FEDERAL AGENCIES.—Each Federal agency shall furnish the Chief Counsel such reports and other information as the Chief Counsel considers necessary to carry out this section.

(i) REPORTS.—The Chief Counsel may from time to time prepare and publish such reports as the Chief Counsel considers appropriate.

§ 10308. Division of Program Certification and Eligibility

(a) DEFINITIONS.—In this section:

(1) ASSOCIATE ADMINISTRATOR.—The term ''Associate Administrator'' means the Associate Administrator for Minority Small Business and Capital Ownership Development.

(2) DIRECTOR.—The term ''Director'' means the Director of the Division.

(3) DIVISION.—The term ''Division'' means the Division of Program Certification and Eligibility established by subsection (b).

(b) ESTABLISHMENT.—There is established in the Office of Minority Small Business and Capital Ownership Development a Division of Program Certification and Eligibility.

(c) DIRECTOR.—The Division shall be headed by a Director, who shall report directly to the Associate Administrator.

(d) FIELD OFFICES.—The Director shall establish field offices within such regional offices of the Administration as are necessary to perform efficiently the functions and responsibilities of the Director.

(e) DUTIES.—The duties of the Director are—

(1) to receive, review, and evaluate applications for certification under the business development program;

(2) to advise a business development program applicant within 15 days after receipt of an application whether the application is complete and suitable for evaluation and, if not, what matters must be rectified;

(3) to make recommendations on such applications to the Associate Administrator;

(4) to review and evaluate financial statements and other submissions from small business concerns participating in the business development program to ascertain continued eligibility to receive subcontracts under the business development program;

(5) to make a request for the initiation of termination or graduation proceedings, as appropriate, to the Associate Administrator;

(6) to make recommendations to the Associate Administrator concerning protests from applicants that are denied admission to the business development program;

(7) to decide protests regarding the status of a small business concern as a small business concern owned and controlled by socially and economically disadvantaged individuals for purposes of any program or activity conducted under chapter 243 or any other provision of Federal law that refers to that chapter for a definition of eligibility for any program; and

(8) to implement such policy directives as are issued by the Associate Administrator under section 23326 of this title regarding, among other things, the geographic distribution of small business concerns to be admitted to the business development program and the industrial makeup of those small business concerns.

(f) DECISIONS ON PROTESTS.—

(1) IN GENERAL.—A decision under subsection (e)(7) shall—

(A) be made available to the protestor, the protested party, the contracting officer (if not the protestor), and all other parties to the proceeding, and published in full text; and

(B) include findings of fact and conclusions of law, with specific reasons supporting the findings or conclusions, on each material

issue of fact and law of decisional significance regarding the disposition of the protest.

(2) PRECEDENTIAL VALUE OF PRIOR DECISIONS.—A decision under subsection (e)(7) that was issued before September 4, 1992, shall not have value as precedent in deciding any subsequent protest until the decision is published in full text.

§ 10309. Office of International Trade

(a) DEFINITION OF OFFICE.—In this section, the term ''Office'' means the Office of International Trade.

(b) ESTABLISHMENT OF OFFICE.—There is established within the Administration an Office of International Trade, which shall implement the programs under this section.

(c) DISTRIBUTION NETWORK; MARKETING OF PROGRAMS AND DISSEMINATION OF INFORMATION; BILINGUAL JOB APPLICANTS.—

(1) IN GENERAL.—The Office, working in close cooperation with the Department of Commerce and other Federal agencies, small business development centers engaged in export promotion efforts, regional and local Administration offices, the small business community, and State and local export promotion programs, shall—

(A) assist in developing a distribution network for existing trade promotion, trade finance, trade adjustment, trade remedy assistance and trade data collection programs through use of the Administration's regional and local offices and the small business development center network;

(B) assist in the aggressive marketing of the programs described in subparagraph (A) and the dissemination of marketing information, including computerized marketing data, to the small business community; and

(C) give preference in hiring or approving the transfer of any employee into the Office or to a position described in subsection (d)(2)(H) to otherwise qualified applicants who are fluent in a language in addition to English.

(2) BILINGUAL EMPLOYEES.—Bilingual employees hired or transferred under paragraph (1)(C)—

(A) shall accompany foreign trade missions if designated by the director of the Office; and

(B) shall be available as needed to translate documents, interpret conversations, and facilitate multilingual transactions including providing referral lists for translation services if required.

(d) PROMOTION OF SALES OPPORTUNITIES FOR GOODS AND SERVICES ABROAD.—

(1) IN GENERAL.—The Office shall promote sales opportunities for small business goods and services abroad.

(2) ACTIVITIES.—To accomplish the objective stated in paragraph (1), the Office shall—

(A) in cooperation with the Department of Commerce, other Federal agencies, regional and local Administration offices, the small business development center network, and State programs, develop a mechanism for—

(i) identifying subsectors of the small business community with strong export potential;

(ii) identifying areas of demand in foreign markets;

(iii) prescreening foreign buyers for commercial and credit purposes; and

(iv) assisting in increasing international marketing by disseminating relevant information regarding market leads, linking potential sellers and buyers, and catalyzing the formation of joint ventures, where appropriate;

(B) in cooperation with the Department of Commerce, actively assist small business concerns in the formation and utilization of export trading companies, export management companies and research and development pools authorized under division H of subtitle II;

(C) work in conjunction with other Federal agencies, regional and local offices of the Administration, the small business development center network, and the private sector to identify and publicize existing translation services, including those available through colleges and universities participating in the small business development center program;

(D) work closely with the Department of Commerce and other relevant Federal agencies to—

(i)(I) collect, analyze and periodically update relevant data regarding the small business share of United States exports and the nature of State exports (including the production of Gross State Product figures); and

(II) disseminate those data to the public and to Congress;

(ii) make recommendations to the Secretary of Commerce and to Congress regarding revision of the North American Industry Classification System codes to encompass industries currently overlooked and to create North American Industry Classification System codes for export trading companies and export management companies;

(iii) improve the utility and accessibility of existing export promotion programs for small business concerns; and

(iv) increase the accessibility of the Export Trading Company contact facilitation service of the Department of Commerce;

(E) make available to the small business community information regarding conferences on exporting and international trade sponsored by the public and private sectors;

(F) provide small business concerns with access to current and complete export information by—

(i) making available, at the Administration's regional offices through cooperation with the Department of Commerce, export information, including the worldwide information and trade system and world trade data reports;

(ii) maintaining a current list of financial institutions that finance export operations;

(iii) maintaining a current directory of all Federal, regional, State and private sector programs that provide export information and assistance to small business concerns; and

(iv) preparing and publishing such reports as the Office determines to be necessary concerning market conditions, sources of financing, export promotion programs, and other information pertaining to the needs of exporting small business concerns so as to ensure that the maximum information is made available to small business concerns in a readily usable form;

(G) in cooperation with the Department of Commerce, encourage greater participation by small business concerns in trade fairs, shows, missions, and other domestic and overseas export development activities of the Department of Commerce; and

(H) facilitate decentralized delivery of export information and assistance to small business concerns by—

(i) assigning full-time export development specialists to each Administration regional office; and

(ii) assigning primary responsibility for export development to one person in each district office.

(3) DUTIES OF EXPORT DEVELOPMENT SPECIALISTS AND DISTRICT PERSONNEL ASSIGNED PRIMARY RESPONSIBILITY FOR EXPORT DEVELOPMENT.—An export development specialist assigned to an Administration regional office under paragraph (2)(H)(i) and a person in a district assigned primary responsibility for export development shall—

(A) assist small business concerns in obtaining export information and assistance from other Federal agencies;

(B) maintain a current directory of all programs that provide export information and assistance to small business concerns in the region;

(C) encourage financial institutions to develop and expand programs for export financing;

(D) provide advice to Administration personnel involved in granting loans, loan guarantees, and extensions and revolving lines of credit and providing other forms of assistance to small business concerns engaged in exporting; and

(E) within 180 days after being appointed as an export development specialist, participate in a training program designed by the Administrator, in conjunction with the Department of Commerce and other Federal agencies, to study export programs and to examine the needs of small business concerns for export information and assistance.

(e) ACCESS TO EXPORT AND PRE-EXPORT FINANCING PROGRAMS.—

(1) IN GENERAL.—The Office shall work in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other Federal agencies, and the States to develop a program through which export specialists in the regional offices of the Administration, regional and local loan officers, and small business development center personnel can facilitate the access of small business concerns to relevant export financing programs of the Export-Import Bank of the United States and to export and pre-export financing programs available from the Administration and the private sector.

(2) ACTIVITIES.—To accomplish the goal stated in paragraph (1), the Office shall work in cooperation with the Export-Import Bank of the United States and the small business community, including small business trade associations, to—

(A) aggressively market existing Administration export financing and pre-export financing programs;

(B) identify financing available under various programs of the Export-Import Bank of the United States, and aggressively market those programs to small business concerns;

(C) assist in the development of financial intermediaries and facilitate the access of those intermediaries to existing financing programs;

(D) promote greater participation by private financial institutions, particularly those institutions already participating in loan programs under subtitle II, in export finance; and

(E) provide for the participation of appropriate Administration personnel in training programs conducted by the Export-Import Bank of the United States.

(f) TRADE PROCEEDINGS.—The Office shall—

(1) work in cooperation with other Federal agencies and the private sector to counsel small business concerns with respect to initiating and participating in any proceedings relating to the administration of the United States trade laws; and

(2) work with the Department of Commerce, the Office of the United States Trade Representative, and the International Trade Commission to increase access to trade remedy proceedings for small business concerns.

§ 10310. Office of Rural Affairs

(a) DEFINITION OF OFFICE.—In this section, the term ''Office'' means the Office of Rural Affairs.

(b) ESTABLISHMENT OF OFFICE.—There is established in the Administration an Office of Rural Affairs.

(c) DIRECTOR.—The Office shall be headed by a director appointed by the Administrator.

(d) FUNCTIONS.—The Office shall—

(1) strive to achieve an equitable distribution of the financial assistance available from the Administration for small business concerns located in rural areas;

(2) to the extent practicable, compile annual statistics on rural areas, including statistics concerning the population, poverty, job creation and retention, unemployment, business failures, and business startups;

(3) provide information to industries, organizations, and State and local governments concerning the assistance available to rural small business concerns through the Administration and through other Federal agencies;

(4) provide information to industries, organizations, educational institutions, and State and local governments concerning programs administered by private organizations, educational institutions, and Federal, State, and local governments that improve the economic opportunities of rural citizens; and

(5) work with the United States National Tourism Organization to assist small business concerns in rural areas with tourism promotion and development.

§ 10311. Office of Women's Business Ownership

(a) DEFINITIONS.—In this section:

(1) ASSISTANT ADMINISTRATOR.—The term ''Assistant Administrator'' means the Assistant Administrator appointed under subsection (c).

(2) OFFICE.—The term ''Office'' means the Office of Women's Business ownership established by subsection (b).

(b) ESTABLISHMENT OF OFFICE.—There is established within the Administration an Office of Women's Business Ownership.

(c) ASSISTANT ADMINISTRATOR.—

(1) IN GENERAL.—The Office shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

(2) QUALIFICATION.—The position of Assistant Administrator shall be a Senior Executive Service position under section 3132(a)(2) of title 5. The Assistant Administrator shall serve as a noncareer appointee (as defined in section 3132(a)(7) of that title).

(d) DUTIES.—The Assistant Administrator shall—

(1) administer the Administration's programs for the development of women's business enterprises (as defined in section 40301 of this title);

(2) administer the programs and services of the Office to assist women entrepreneurs in the areas of—

(A) starting and operating a small business concern;

(B) development of management and technical skills;

(C) seeking Federal procurement opportunities; and

(D) increasing the opportunity for access to capital;

(3) administer and manage the women's business center program;

(4) recommend the annual administrative and program budgets for the Office (including the budget for the women's business center program);

(5) establish appropriate funding levels for the Office;

(6) review the annual budgets submitted by each applicant for the women's business center program;

(7) select applicants to participate in the women's business center program;

(8) implement chapter 273;

(9) maintain a clearinghouse to provide for the dissemination and exchange of information between women's business centers;

(10) serve as the vice chairperson of the Interagency Committee on Women's Business Enterprise;

(11) serve as liaison for the National Women's Business Council; and

(12) advise the Administrator on appointments to the Women's Business Council.

(e) CONSULTATION.—In carrying out the duties described in paragraphs (2) to (12) of subsection (d), the Assistant Administrator shall confer with and seek the advice of the Administration officials in areas served by the women's business centers.

§ 10312. Small Business and Agriculture Regulatory Enforcement Ombudsman; regional small business regulatory fairness boards

(a) DEFINITIONS.—In this section:

(1) BOARD.—The term ''Board'' means a regional small business regulatory fairness board established under subsection (e).

(2) OMBUDSMAN.—The term ''Ombudsman'' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b).

(b) SMALL BUSINESS AND AGRICULTURE REGULATORY ENFORCEMENT OMBUDSMAN.—The Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, using personnel of the Administration to the extent practicable.

(c) DUTIES.—The Ombudsman shall—

(1) work with each Federal agency with regulatory authority over small business concerns to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort, or other enforcement-related communication or contact by Federal agency personnel are provided with a means by which to comment on the enforcement activity conducted by those personnel;

(2)(A) establish means by which to—

(i) receive comments from a small business concern regarding actions by Federal agency employees conducting compliance or enforcement activities with respect to the small business concern; and

(ii) refer comments to the Inspector General of the Federal agency in the appropriate circumstances; and

(B) otherwise seek to maintain the identity of the person and small business concern making such comments on a confidential basis to the same extent as employee identities are protected under section 7 of the Inspector General Act of 1978 (5 U.S.C. App.);

(3) based on substantiated comments received from small business concerns and the Boards, after having provided each Federal agency described in paragraph (1) an opportunity to comment on drafts of the

report, annually submit to Congress and those Federal agencies a report that—

(A) evaluates the enforcement activities of Federal agency personnel; and

(B) includes—

(i) a rating of the responsiveness to small business concerns of the various regional and program offices of each such Federal agency; and

(ii) a section in which any such Federal agency may make such comments made by the Federal agency to drafts of the report as are not addressed by the Ombudsman in the final draft; and

(4) coordinate, and annually submit to the Administrator and to the heads of Federal agencies described in paragraph (1) a report on, the activities, findings, and recommendations of the Boards.

(d) FEDERAL AGENCIES OTHER THAN THE ADMINISTRATION.—

(1) ACTIONS TO ENSURE COMPLIANCE.—Federal agencies other than the Administration shall assist the Ombudsman and take actions as necessary to ensure compliance with this section.

(2) EFFECT OF SECTION.—Nothing in this section replaces or diminishes the activities of any ombudsman or similar office in any Federal agency.

(e) REGIONAL SMALL BUSINESS REGULATORY FAIRNESS BOARDS.—

(1) ESTABLISHMENT.—The Administrator shall establish a small business regulatory fairness board in each regional office of the Administration.

(2) MEMBERSHIP.—

(A) IN GENERAL.—A Board shall consist of 5 members who are owners, operators, or officers of small business concerns, appointed by the Administrator, after receiving the recommendations of the chair and ranking minority member of the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(B) POLITICAL AFFILIATION.—Not more than 3 of the members of a Board shall be of the same political party.

(C) GOVERNMENT OFFICERS OR EMPLOYEES.—No member of a Board shall be an officer or employee of the Federal Government in the executive branch or in Congress.

(D) TERM.—A member of a Board shall serve at the pleasure of the Administrator for a term of 3 years or less.

(E) COMPENSATION.—A member of a Board shall serve without compensation, except that a member shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5 while away from the home or regular place of business of the member in the performance of services for the Board.

(3) CHAIR.—The Administrator shall select a chair from among the members of a Board, who shall serve at the pleasure of the Administrator for not more than one year as chair.

(4) QUORUM.—A majority of the members of a Board shall constitute a quorum for the conduct of business, but a lesser number may hold hearings.

(5) DUTIES.—A Board shall—

(A) meet at least annually to advise the Ombudsman on matters of concern to small business concerns relating to the enforcement activities of Federal agencies;

(B) report to the Ombudsman on substantiated instances of excessive enforcement actions of Federal agencies against small business concerns, including any findings or recommendations of the Board as to Federal agency enforcement policy or practice; and

(C) prior to publication, provide comment on the annual report of the Ombudsman prepared under subsection (c).

(6) POWERS.—

(A) HEARINGS; COLLECTION OF INFORMATION.—A Board may hold hearings and collect information as appropriate for carrying out this section.

(B) MAIL.—A Board may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(C) ACCEPTANCE OF DONATIONS.—A Board may accept donations of services necessary to conduct its business, so long as the donations and their sources are disclosed by the Board.

§ 10313. Office of Veterans Business Development

(a) DEFINITION OF ASSOCIATE ADMINISTRATOR.—In this section, the term ''Associate Administrator'' means the Associate Administrator for Veterans Business Development under section 10304(b) of this title.

(b) OFFICE OF VETERANS BUSINESS DEVELOPMENT.—There is established in the Administration an Office of Veterans Business Development, which shall be administered by the Associate Administrator.

(c) DUTIES.—The Associate Administrator—

(1) shall be responsible for the formulation, execution, and promotion of policies and programs of the Administration that provide assistance to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans; and

(2) shall act as an ombudsman for full consideration of veterans in all programs of the Administration.

§ 10314. Task force on purchases from the blind and severely disabled

(a) ESTABLISHMENT.—There is established within the Administration a task force on purchases from the blind and severely disabled.

(b) MEMBERSHIP.—The task force shall consist of one representative of the small business community appointed by the Administrator and one individual knowledgeable in the affairs of or experienced in the work of sheltered workshops appointed by the Executive Director of the Committee for Purchase from the Blind and Other Severely Disabled established under the first section of the Act of June 25, 1938 (41 U.S.C. 46).

(c) DUTIES.—The task force shall meet at least once every 6 months for the purpose of—

(1) reviewing the award of contracts under section 25103 of this title; and

(2) recommending to the Administrator such administrative or statutory changes as the task force considers appropriate.

§ 10315. Advisory committees

(a) IN GENERAL.—The Administrator shall—

(1) establish such advisory committees as are necessary to achieve the purposes of this subtitle and subtitles II and III; and

(2) call meetings of the advisory committees from time to time.

(b) EXPENSES.—The Administrator shall—

(1) pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5 to a member of an advisory committee for travel and subsistence expenses incurred at the request of the Administrator in connection with travel to points more than 50 miles distant from the home of the member in attending a meeting of the advisory committee; and

(2) rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of meetings of an advisory committee.

§ 10316. Bureau of PCLP Oversight

(a) ESTABLISHMENT.—There is established within the 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 Administrator under section 33108(c) of this title as the Administrator may designate.

Subchapter II—Functions

§ 10331. General powers

(a) SEAL.—The Administrator shall have power to adopt, alter, and use a seal, which shall be judicially noticed.

(b) SERVICES AND FACILITIES.—At the request of the Administrator, the head of any Federal agency or of the Government Accountability Office or Postal Service may provide to the Administrator (on a reimbursable or non-reimbursable basis) information, services, facilities (including any field service of the Federal agency), officers, and employees of the Federal agency to assist in carrying out this title or any other law under which the Administrator provides assistance to small business concerns.

(c) COURT PROCEEDINGS.—The Administrator may 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 on a United States 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 property of the Administration.

(d) LIMITATION ON ADVERTISING REQUIREMENT.—Section 3709 of the Revised Statutes (41 U.S.C. 5) shall not apply to a contract of hazard insurance or a purchase or contract for a service or supply on account of property obtained by the Administrator as a result of a loan made under this subtitle or subtitle II or III if the premium for the insurance or the amount of the purchase or contract does not exceed $1,000.

(e) REGULATIONS.—The Administrator may prescribe such regulations as the Administrator considers necessary to carry out the authority vested in the Administrator under this subtitle and subtitles II and III.

(f) ACCEPTANCE OF SERVICES AND FACILITIES.—The Administrator may—

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

(2) use such gratuitous services and facilities as may from time to time be necessary to further the objectives of the disaster assistance programs.

(g) INVESTIGATIONS.—

(1) IN GENERAL.—The Administrator may make such investigations as the Administrator considers necessary to determine whether a recipient of or participant in assistance under this subtitle or subtitle II or

III or any other person has engaged or is about to engage in any act or practice that constitutes or will constitute a violation of any provision of this subtitle or subtitle II or III (including a regulation or order issued under this subtitle or subtitle II or III).

(2) STATEMENTS.—The Administrator shall permit any person to file with the Administrator a statement in writing, under oath or otherwise as the Administrator shall determine, as to all the facts and circumstances concerning a matter to be investigated.

(3) POWERS.—For the purpose of any investigation, the Administration may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. Attendance of witnesses and the production of any such records may be required from any place in the United States.

(4) CONTUMACY OR REFUSAL TO OBEY.—

(A) IN GENERAL.—In case of contumacy by, or refusal to obey a subpoena issued to, any person (including a recipient or participant), the Administrator may invoke the aid of any court of the United States within the jurisdiction of which an investigation or proceeding is carried on, or in which the person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records, and the court may issue an order requiring the person to appear before the Administrator, to produce records, if so ordered, or to give testimony touching the matter under investigation.

(B) FAILURE TO OBEY.—A failure to obey an order under subparagraph (A) may be punished by the court as a contempt of court, for which purpose process may be served in any judicial district of which the person is an inhabitant or in which the person may be found.

(h) EXAMINATION AND REVIEW FEES.—

(1) IN GENERAL.—The Administrator may require a lender authorized to make loans under the general business loan program, the disaster loan program, or the microloan program to pay examination and review fees.

(2) USE.—Fees collected under paragraph (1) shall be deposited in the account for salaries and expenses of the Administrator and shall be available for the costs of examinations, reviews, and other lender oversight activities.

(i) LOAN REQUIREMENTS RELATING TO ASSISTANCE PROVIDED TO LOAN APPLICANTS, NONEMPLOYMENT OF PERSONS ASSOCIATED WITH THE AD-

MINISTRATION, AND LOAN APPLICATIONS.—No loan shall be made or equipment, facilities, or services furnished by the Administrator under this subtitle or subtitle II or III to any business concern unless the owners, partners, or officers of the business concern—

(1) certify to the Administrator—

(A) the names of any attorneys, agents, or other persons engaged by or on behalf of the business concern for the purpose of expediting applications made to the Administrator for assistance of any sort; and

(B) the amount of fees paid or to be paid to any such persons;

(2) execute an agreement binding the business concern, for a period of 2 years after any assistance is rendered by the Administrator to the business concern, to refrain from employing, tendering any office or employment to, or retaining for professional services any individual who, on the date on which any part of the assistance was rendered, or within one year prior to that date, served as an officer, attorney, agent, or employee of the Administrator occupying a position or engaging in an activity that, as determined by the Administrator, involves the exercise of discretion with respect to the granting of assistance under this subtitle or subtitle II or III; and

(3) furnish—

(A) the names of lending institutions to which the business concern has applied for a loan; and

(B) the date, amount, terms, and proof of refusal of any loan.

(j) AUTHORITY RELATING TO TRANSFER OF FUNCTIONS, POWERS, AND DUTIES.—The President may—

(1) transfer to the Administrator any function, power, or duty of any Federal agency that relates primarily to small business problems; and

(2) in connection with the transfer, provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the Federal agency from which the transfer is made.

(k) FAIR CHARGES; RECOVERY OF DIRECT COSTS.—To the fullest extent that the Administrator considers practicable, the Administrator shall—

(1) make a fair charge for the use of Government-owned property; and

(2) make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administrator.

(*l*) NONDUPLICATION OF WORK OR ACTIVITY.—The Administrator shall not duplicate the work or activity of any other Federal agency unless such

work or activity is expressly provided for in this subtitle or subtitle II or III.

(m) SAFE DEPOSIT BOX RENTALS.—Subsections (a) and (b) of section 3324 of title 31 shall not apply to prepayments of rentals made by the Administrator on safe deposit boxes used by the Administrator for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

(n) NONDISCRIMINATION.—In carrying out the programs administered by the Administrator, the Administrator shall not discriminate on the basis of sex or marital status against any small business concern or other person applying for or receiving assistance from the Administration.

(*o*) SPECIAL CONSIDERATION TO VETERANS.—In carrying out the programs administered by the Administrator, the Administrator shall give special consideration to veterans and their survivors or dependents.

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

(q) OBSCENE PRODUCTS AND SERVICES.—Notwithstanding any other provision of law, the Administrator shall not provide any financial or other assistance to any business concern or other person engaged in the production or distribution of any product or service that has been determined by a court of competent jurisdiction to be obscene.

(r) GIFTS.—In carrying out the functions of the Administrator under this subtitle and subtitles II and III and to carry out the activities authorized by chapter 403, the Administrator may—

(1) accept, in the name of the Administrator, and employ or dispose of in furtherance of the purposes of this subtitle or subtitle II or III, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and

(2) accept gratuitous services and facilities.

§ 10332. Financial management

(a) ACCOUNTS.—

(1) IN GENERAL.—All repayments of loans, debentures, payments of interest, and other receipts arising out of transactions entered into by the Administrator shall be deposited in appropriate accounts as determined by the Administrator.

(2) BUDGETS.—Business-type budgets for each of the accounts referred to in paragraph (1) shall be—

(A) submitted to the Committee on Appropriations and Committee on Small Business and Entrepreneurship of the Senate and the Committee on Appropriations and Committee on Small Business of the House of Representatives; and

(B) enacted in the manner prescribed by sections 9103 and 9104 of title 31 for wholly owned Government corporations.

(3) REPORTS.—As soon as possible after the beginning of each calendar quarter, the Administrator shall submit to the Committee on Appropriations and 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 that describes the status of each of the accounts referred to in paragraph (1).

(4) ISSUANCE OF NOTES.—

(A) IN GENERAL.—The Administrator may issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under, and for authorized expenditures out of, the accounts referred to in paragraph (1).

(B) FORM.—Notes issued under subparagraph (A) shall be in such form and denominations, have such maturities, and be subject to such terms and conditions as the Administrator may prescribe with the approval of the Secretary of the Treasury.

(C) INTEREST.—Notes issued under subparagraph (A) shall bear interest at a rate fixed by the Secretary of the Treasury, taking into consideration the current average market yield of outstanding marketable obligations of the United States having maturities comparable to those of the notes issued under subparagraph (A).

(D) PURCHASE BY THE SECRETARY OF THE TREASURY.—The Secretary of the Treasury shall purchase any notes of the Administration issued under subparagraph (A), and for that purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, and the purposes for which such securities may be issued under that chapter are extended to include the purchase of notes issued under subparagraph (A).

(E) TREATMENT AS PUBLIC DEBT TRANSACTIONS.—All redemptions, purchases, and sales by the Secretary of the Treasury of notes issued under subparagraph (A) shall be treated as public debt transactions of the United States.

(F) BORROWING AUTHORITY SUBJECT TO AVAILABILITY OF APPROPRIATIONS.—All borrowing authority contained in this para-

graph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(5) UNNEEDED AMOUNTS.—Amounts in an account referred to in paragraph (1) that are not needed for current operations may be paid into miscellaneous receipts of the Treasury.

(6) INTEREST.—

(A) ACTUAL INTEREST COLLECTED.—Following the close of each fiscal year, the Administrator shall pay into the miscellaneous receipts of the United States Treasury the actual interest that the Administration collects during that fiscal year on all financings made under subtitle II.

(B) INTEREST RECEIVED ON FINANCING FUNCTIONS.—

(i) IN GENERAL.—Except on loan disbursements on which interest is paid under subparagraph (A), following the close of each fiscal year, the Administrator shall pay into miscellaneous receipts of the Treasury interest received by the Administration on financing functions performed under this subtitle, subtitle II, and divisions B and C of subtitle III if the capital used to perform those functions originates from appropriated funds.

(ii) TREATMENT.—Payments under clause (i) shall be treated by the Department of the Treasury as interest income, not as retirement of indebtedness.

(7) CONTRIBUTIONS TO EMPLOYEES' COMPENSATION FUNDS.—

(A) IN GENERAL.—The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from the fund on account of employees engaged in carrying out functions financed under the accounts described in paragraph (1).

(B) STATEMENT OF COST.—The annual billings shall include a statement of the fair portion of the cost of the administration of the employees' compensation fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

(b) FINANCIAL MANAGEMENT POWERS.—

(1) DISPOSITION OF EVIDENCE OF DEBT, CONTRACT, CLAIM, PERSONAL PROPERTY, OR SECURITY.—Under regulations prescribed by the Administrator, the Administrator may—

(A) assign or sell at public or private sale, or otherwise dispose of for cash or credit, in the discretion of the Administrator and on such terms and conditions and for such consideration as the

Administrator determines to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by the Administrator in connection with the payment of loans granted under subtitle II or III; and

(B) collect or compromise all obligations assigned to or held by the Administrator and all legal or equitable rights accruing to the Administrator 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.

(2) ADMINISTRATION MONEYS.—

(A) DEPOSIT IN TREASURY.—All moneys of the Administration not otherwise employed may be deposited in the Treasury subject to check by authority of the Administrator.

(B) FEDERAL RESERVE BANKS.—

(i) IN GENERAL.—The Federal Reserve banks shall act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers under this subtitle and subtitles II and III.

(ii) REIMBURSEMENT.—A Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administration, shall be entitled to be reimbursed for all expenses incurred as fiscal agent.

(C) BANKS INSURED BY FDIC.—A bank insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodian and financial agent for the Administration.

(3) REAL PROPERTY.—

(A) CONVEYANCE.—The power to convey and to execute in the name of the Administrator a deed of conveyance, deed of release, assignment and satisfaction of mortgages, or any other written instrument relating to real property or any interest in real property acquired by the Administrator under this subtitle or subtitle II or III may be exercised—

(i) by the Administrator; or

(ii) by any officer or agent appointed by the Administrator, with or without the execution of an express delegation of power or power of attorney.

(B) OTHER AUTHORITY.—The Administrator may deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit, on such terms and conditions and for such consideration as the Administrator determines to be reasonable, any real

property conveyed to or otherwise acquired by the Administrator in connection with the payment of loans granted under subtitle II or III.

(4) COLLECTIONS.—

(A) IN GENERAL.—The Administrator may 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 the Administrator.

(B) DEFICIENCY JUDGMENTS.—The authority under subparagraph (A) includes authority to obtain a deficiency judgment or otherwise in the case of a mortgage assigned to the Administrator.

(5) ACQUISITION OF PROPERTY.—The Administrator may acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), when the Administrator considers it necessary or appropriate to the conduct of the general business loan program and disaster assistance programs.

(6) ASSET SALES.—In connection with the Administrator's implementation of a program to sell to the private sector loans and other assets held by the Administrator, the Administrator shall provide to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a copy of the draft and final plans describing the sale and the anticipated benefits resulting from the sale.

(c) SALE OF GUARANTEED PORTION OF LOAN BY LENDER OR SUBSEQUENT HOLDER.—

(1) IN GENERAL.—The guaranteed portion of a loan made under subtitle II or III may be sold by the lender, and by any subsequent holder, consistent with regulations prescribed by the Administrator, subject to the limitations stated in paragraph (2).

(2) LIMITATIONS.—

(A) APPROVAL.—Before the Administrator approves a sale or resale under paragraph (1), if the lender certifies that the loan has been properly closed and that the lender has substantially complied with the guarantee agreement and the regulations of the Administrator, the Administrator shall review and approve only materials not previously approved.

(B) FEES.—All fees due the Administrator on a guaranteed loan shall be paid in full prior to a sale or resale under paragraph (1).

(C) DISBURSEMENT.—A loan (except a loan made under section 20508 of this title) shall be fully disbursed to the borrower before a sale or resale under paragraph (1).

(3) CONTINUING OBLIGATION.—After a loan is sold, the lender shall remain obligated under its guarantee agreement with the Administrator and shall continue to service the loan in a manner consistent with the terms and conditions of the guarantee agreement.

(4) SECONDARY MARKET.—

(A) PROCEDURES.—The Administrator shall develop such procedures as are necessary for—

(i) the facilitation, administration, and promotion of secondary market operations; and

(ii) assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations.

(B) UNIFORM REGULATIONS.—The sale of the unguaranteed portion of a loan made under the general business loan program shall not be permitted except in accordance with a regulation prescribed by the Administrator that—

(i) applies uniformly to both depository institutions and other lenders; and

(ii) specifies 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.

(C) LONG-TERM VIABILITY.—The Administrator shall take such actions in the awarding of contracts as the Administrator considers necessary to ensure the continued long-term viability of the secondary market in loans, debentures, and other securities guaranteed by the Administrator.

(5) EFFECT OF SUBSECTIONS.—Nothing in this subsection or subsection (d) impedes or extinguishes—

(A) the right of a borrower or a successor in interest to a borrower to prepay (in whole or in part) a loan made under the general business loan program, the guaranteed portion of which may be included in a trust or pool; or

(B) the rights of any person under subsection (i).

(d) TRUST CERTIFICATES.—

(1) IN GENERAL.—The Administrator may issue trust certificates representing ownership of all or a fractional part of the guaranteed

portion of one or more loans guaranteed by the Administrator under subtitle II or section 33103 of this title.

(2) TRUST OR POOL.—A trust certificate shall be based on and backed by a trust or pool approved by the Administrator and composed solely of the entire guaranteed portion of a loan.

(3) GUARANTEE.—

(A) IN GENERAL.—The Administrator, on such terms and conditions as the Administrator considers appropriate, may guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or an agent of the Administrator for purposes of this subsection.

(B) LIMIT.—

(i) IN GENERAL.—A guarantee under subparagraph (A) shall be limited to the extent of principal and interest on the guaranteed portion of the loan or loans that compose the trust or pool.

(ii) PREPAYMENT.—If a loan in a 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 certificate shall be reduced in proportion to the amount of principal and interest that the prepaid loan represents in the trust or pool.

(iii) INTEREST.—Interest on prepaid or defaulted loans shall accrue and be guaranteed by the Administrator only through the date of payment on the guarantee.

(iv) CALL.—During the term of a trust certificate, the trust certificate may be called for redemption due to prepayment or default of all loans constituting the trust or pool.

(4) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administration or its agent under this subsection.

(5) FEES.—

(A) IN GENERAL.—The Administrator may impose a fee for a loan guarantee sold into the secondary market under subsection (c) 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 Administrator.

(B) COLLECTION; USE.—A fee under subparagraph (A)—

(i) shall be collected by the Administrator or by the agent that carries out on behalf of the Administrator the central registration functions required by subsection (e); and

(ii) shall be paid to the Administrator and used solely to reduce the subsidy on loans guaranteed under the general business loan program.

(C) NO CHARGE TO BORROWER.—A fee under subparagraph (A) shall not be charged to the borrower under the loan that is guaranteed.

(D) NO PRECLUSION.—Nothing in this paragraph precludes an agent of the Administrator from collecting a fee approved by the Administrator for the functions described in subsection (e)(2)(A)(ii).

(E) PENALTY.—The Administrator may impose and collect, directly or through a fiscal and transfer agent, a reasonable penalty on late payment of a fee under subparagraph (A) in an amount not to exceed 5 percent of the fee per month plus interest.

(F) AGENTS.—

(i) IN GENERAL.—The Administrator may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under section 20314 of this title.

(ii) COMPENSATION.—An 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 Administrator.

(6) SUBROGATION.—If the Administrator pays a claim under a guarantee issued under this subsection, the Administrator shall be subrogated fully to the rights satisfied by the payment.

(7) EXERCISE OF OWNERSHIP RIGHTS.—No Federal, State, or local 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 a trust certificate is issued.

(e) CENTRAL REGISTRATION OF LOANS AND TRUST CERTIFICATES.—

(1) DEFINITION OF SELLER.—In this subsection, the term ''seller'', with respect to a sale of a loan, does not include—

(A) an entity that made the loan; or

(B) an individual or entity that sells 3 or fewer guaranteed loans per year.

(2) IN GENERAL.—Under regulations prescribed by the Administrator—

(A) the Administrator shall—

(i) provide for a central registration of all loans and trust certificates sold under subsections (c) and (d);

(ii) contract with an agent to carry out on behalf of the Administrator the central registration functions of this section and the issuance of trust certificates to facilitate pooling; and

(iii) prior to any sale, require the seller to disclose to a purchaser of the guaranteed portion of a loan guaranteed under subtitle II and to the purchaser of a trust certificate issued under subsection (d) information on the terms, conditions, and yield of the instrument to be sold; and

(B) the Administrator may regulate brokers and dealers in guaranteed loans and trust certificates sold under subsections (c) and (d).

(3) AGENT.—An agent described in paragraph (2)(A)(ii)—

(A) shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interest of the Government; and

(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 the funds are in the control of the agent and before the time at which the agent is contractually required to transfer the funds to the Administrator or to the holders of the trust certificates, as appropriate.

(4) FORM OF REGISTRATION.—

(A) IN GENERAL.—This subsection does not preclude the use of a book-entry or other electronic form of registration for trust certificates.

(B) BOOK-ENTRY SYSTEM.—The Administration may, with the consent of the Secretary of the Treasury, use the book-entry system of the Federal Reserve System.

(f) ACTION DEALING WITH OR REALIZING ON LOAN.—

(1) IN GENERAL.—In addition to exercising any power, function, privilege, or immunity vested in the Administrator by any other provision of law, the Administrator may take any and all actions (including the procurement of the services of an attorney by contract in any office in which an attorney is not or cannot be economically employed full time to render such services) if the Administrator determines that such action is necessary or desirable in making, servicing, compromising,

modifying, liquidating, or otherwise dealing with or realizing on a loan made under subtitle II or III.

(2) DEFERRED PARTICIPATION LOAN.—With respect to a deferred participation loan, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize a participating lending institution to take action relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation.

(3) PREFERRED LENDERS PROGRAM.—

(A) IN GENERAL.—Under this subsection, the Administrator may carry out a preferred lenders program under which a written agreement between a lender and the Administrator delegates to the lender—

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

(ii) complete authority to service and liquidate the loans without obtaining the prior specific approval of the Administrator for routine servicing and liquidation activities, subject to the limitation that the lender shall not take any action creating an actual or apparent conflict of interest.

(B) STANDARD REVIEW PROGRAM.—The Administrator shall carry out a standard review program under which, on entry into the preferred lenders program and annually or more frequently thereafter, each preferred lender's participation in the preferred lenders program is assessed, including an assessment of defaults, loans, and recoveries of loans made by the preferred lender under the general business loan program.

(g) FEES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator may impose, retain, and use only—

(A) fees that are specifically authorized by law; and

(B) fees that were in effect on September 30, 1994, in the amounts and at the rates in effect on that date.

(2) ADDITIONAL FEES.—The Administrator may, subject to approval in appropriations Acts, impose, retain, and use, in addition to fees described in paragraph (1)—

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

(B) a fee not exceeding $300 for a loan assumption;

(C) a fee not exceeding one percent of the amount of requested financings under chapter 303 for which the applicant requests a commitment from the Administration for funding during the following year; and

(D) fees to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administrator under this title.

(3) LIMITATION ON USE.—Amounts collected under this subsection shall be used solely to facilitate the administration of the program that generated the excess amounts.

(h) AMOUNTS COLLECTED BY FISCAL TRANSFER AGENTS.—

(1) IN GENERAL.—The Administrator may collect, retain and use, subject to approval in appropriations Acts, any amount collected by a fiscal transfer agent that is not used by the fiscal transfer agent as payment of the cost of loan pooling or debenture servicing operations.

(2) LIMITATION ON USE.—Amounts collected under this subsection shall be used solely to facilitate the administration of the program that generated the excess amounts.

(i) UNDERTAKING OR SUSPENSION OF PAYMENT OBLIGATION.—

(1) DEFINITION OF REQUIRED PAYMENTS.—In this subsection, the term ''required payment'', with respect to a loan, means a payment of principal and interest under the loan.

(2) IN GENERAL.—Subject to the requirements and conditions contained in this subsection, on application by a small business concern that is the recipient of a loan made under subtitle II or III, the Administrator may—

(A) undertake the small business concern's obligation to make the required payments under the loan; or

(B) if the loan was a direct loan made by the Administrator, suspend the obligation.

(3) NO REQUIREMENT FOR PAYMENT.—During any period in which required payments are being made by the Administrator pursuant to an undertaking of an obligation or in which an obligation is suspended, no required payment with respect to the loan may be required to be made by the small business concern.

(4) CONDITIONS.—The Administrator may undertake or suspend for a period of not to exceed 5 years a small business concern's obligation under this subsection only if—

(A) without the undertaking or suspension of the obligation, the small business concern would, as determined in the sole discretion of the Administrator, become insolvent or remain insolvent;

(B) with the undertaking or suspension of the obligation, the small business concern would, as determined in the sole discretion of the Administrator, become or remain a viable business; and

(C) the small business concern executes an agreement in writing satisfactory to the Administrator as provided in paragraph (6).

(5) EXTENSION OF TERM.—Notwithstanding section 20309 of this title, the Administrator may extend the term of a loan on which the Administrator undertakes or suspends the obligation under this subsection for a corresponding period of time.

(6) AGREEMENT; REQUIRED ACTION.—

(A) AGREEMENT.—Before undertaking or suspending a small business concern's obligation under this subsection, the Administrator, consistent with the purposes of this subsection, shall require the small business concern to agree in writing to repay to the Administrator the aggregate amount of the required payments during the period for which the obligation was undertaken or suspended—

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

(ii) pursuant to a repayment schedule agreed on by the Administrator and the small business concern; or

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

(B) REQUIRED ACTION.—In addition to requiring the small business concern to execute the agreement described in subparagraph (A), the Administrator shall, before undertaking or suspending the obligation, take such action, and require the small business concern to take such action, as the Administrator considers appropriate in the circumstances (including the provision of such security as the Administrator considers necessary or appropriate) to ensure that the rights and interests of the lender will be safeguarded adequately during and after the period in which the obligation is undertaken or suspended.

(j) INTEREST RATE ON DEFERRED PARTICIPATION.—On purchase by the Administrator of a deferred participation entered into under the general business loan program or disaster loan program, the Administrator may continue to charge a rate of interest not to exceed that initially charged by

the participating institution on the amount purchased for the remaining term of the indebtedness.

(k) SUBORDINATION TO CERTAIN STATE TAX LIENS.—Any interest held by the Administrator in property as security for a loan shall be subordinate to any lien on the property for taxes due on the property to a State or political subdivision of a State in any case in which the lien would, under applicable State law, be superior to that interest if the interest were held by any party other than the United States.

(*l*) RISK MANAGEMENT DATABASE.—

(1) ESTABLISHMENT.—The Administrator shall establish, within the management system for the general business loan program, disaster assistance programs, and certified development company program a management information system that will generate a database capable of providing timely and accurate information in order to identify loan underwriting, collections, recovery, and liquidation problems.

(2) INFORMATION TO BE MAINTAINED.—In addition to such other information as the Administrator considers appropriate, the database established under paragraph (1) shall, with respect to each loan program described in paragraph (1), include information relating to—

(A) the identity of the institution making the guaranteed loan or issuing the debenture;

(B) the identity of the borrower;

(C) the total dollar amount of the loan or debenture;

(D) the total dollar amount of Government exposure in each loan;

(E) the district of the Administration in which the borrower has its principal office;

(F) the principal line of business of the borrower, as identified by North American Industry Classification System (or any successor to that system) code;

(G) the delinquency rate for each program (including number of instances and days overdue);

(H) the number and amount of repurchases, losses, and recoveries in each program;

(I) the number of deferrals or forbearances in each program (including days and number of instances);

(J) comparisons, on the basis of loan program, lender, Administration district and region, for all the data elements maintained; and

(K) underwriting characteristics of each loan that has entered into default, including term, amount and type of collateral, loan-

to-value and other actual and projected ratios, line of business, credit history, and type of loan.

§ 10333. Small business economic database

(a) IN GENERAL.—The Administrator shall maintain an external small business economic database for the purpose of providing Congress and the Administration information on the economic condition and the expansion or contraction of the small business sector.

(b) ECONOMIC INDICES.—In carrying out subsection (a), the Administrator shall publish on a regular basis national small business economic indices and, to the extent feasible, regional small business economic indices that include data relating to—

(1) employment, layoffs, and new hires;

(2) number of business establishments and the types of such establishments such as sole proprietorships, corporations, and partnerships;

(3) number of business formations and failures;

(4) sales and new orders;

(5) back orders;

(6) investment in plant and equipment;

(7) changes in inventory and rate of inventory turnover;

(8) sources and amounts of capital investment, including debt, equity, and internally generated funds;

(9) debt-to-equity ratios;

(10) exports;

(11) number and dollar amount of mergers and acquisitions by size of acquiring and acquired firm; and

(12) concentration ratios.

§ 10334. Small business computer security and education program

(a) IN GENERAL.—The Administrator shall establish a small business computer security and education program to—

(1) provide small business concerns information regarding—

(A) utilization and management of computer technology;

(B) computer crimes committed against small business concerns; and

(C) security for computers owned or utilized by small business concerns;

(2) provide for periodic forums for small business concerns to improve their knowledge of the matters described in paragraph (1); and

(3) provide training opportunities to educate small business users on computer security techniques.

(b) INFORMATION AND MATERIALS.—The Administrator, after consultation with the Director of the National Institute of Standards and Technology of the Department of Commerce, shall develop information and materials to carry out the activities described in subsection (a).

§ 10335. General policies governing the granting and denial of applications

The Administrator shall establish general policies (particularly with reference to the public interest in the granting and denial of applications for financial assistance by the Administrator and with reference to the coordination of the functions of the Administration with other activities and policies of the Government), which shall govern the granting and denial of applications for financial assistance by the Administrator.

§ 10336. Retention of records

The Administrator and the Inspector General of the Administration shall—

(1) retain all correspondence, records of inquiries, memoranda, reports, books, and other records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year after the date of the record; and

(2) at all times keep the records available for inspection and examination by the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives or the authorized representatives of either Committee.

§ 10337. Consultation and cooperation with other Federal agencies

(a) IN GENERAL.—To the extent that the Administrator considers it necessary to protect and preserve small business interests, the Administrator shall consult and cooperate with other Federal agencies in the formulation by the Administrator of policies affecting small business concerns.

(b) RESPONSE.—When requested by the Administrator, a Federal agency shall consult and cooperate with the Administrator in the formulation by the Federal agency of policies affecting small business concerns to ensure that small business interests will be recognized, protected, and preserved.

(c) EFFECT OF SECTION.—This section does not require a Federal agency to consult or cooperate with the Administrator in a case in which the head of the Federal agency determines that such consultation or cooperation would unduly delay action that must be taken by the Federal agency to protect the national interest in an emergency.

§ 10338. Representation of status as small business concern

(a) IN GENERAL.—Any representation of the status of any concern or person as a small business concern, HUBZone small business concern, small

business concern owned and controlled by socially and economically disadvantaged individuals, or small business concern owned and controlled by women in order to obtain any prime contract or subcontract described in subsection (b) shall be of no effect unless the representation is in writing.

(b) PRIME CONTRACTS AND SUBCONTRACTS.—A prime contract or subcontract referred to in subsection (a) is—

(1) a prime contract to be awarded under chapter 251, 253, 261, or 263;

(2) a subcontract to be awarded under chapter 233;

(3) a subcontract that is to be included as part or all of a goal contained in a subcontracting plan required under section 24303 of this title; or

(4) a prime contract or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references chapter 243 for a definition of program eligibility.

§ 10339. Criminal background checks

Before approval of a loan under the general business loan program or a debenture guarantee under the certified development company program, the Administrator may verify the applicant's criminal background (or lack of criminal background) through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

CHAPTER 105—PENALTIES

Sec.
10501. False statement; overvaluation of security.
10502. Unlawful act by person connected with the Administration.
10503. Concealment, disposal, or conversion of property.
10504. Misrepresentation of status as small business concern.
10505. False certification of past compliance.

§ 10501. False statement; overvaluation of security

A person that makes a statement, knowing the statement to be false, or willfully overvalues a security for the purpose of obtaining for himself or for any applicant a loan, or a loan extension by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security for a loan, or for the purpose of influencing in any way the action of the Administrator, or for the purpose of obtaining money, property, or anything of value, under this subtitle or subtitle II or III, shall be imprisoned not more than 2 years, fined not more than $5,000, or both.

§ 10502. Unlawful act by person connected with the Administration

A person connected in any capacity with the Administration that—

(1) embezzles, abstracts, purloins, or willfully misapplies any money, funds, security, or other thing of value, whether belonging to the Administrator or pledged or otherwise entrusted to the Administrator;

(2) with intent to defraud the Administrator or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration—

(A) makes a false entry in a book, report, or statement of or to the Administrator; or

(B) without being duly authorized, draws an order or issues, puts forth, or assigns a note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree of judgment;

(3) with intent to defraud, participates or shares in or receives directly or indirectly any money, profit, property, or benefit through any transaction, loan, commission, contract, or other act of the Administrator; or

(4)(A) gives any unauthorized information concerning a future action or plan of the Administrator that might affect the value of a security; or

(B) having such knowledge, invests or speculates, directly or indirectly, in a security or property of any company or corporation receiving a loan or other assistance from the Administrator;

shall be imprisoned not more than 5 years, fined not more than $10,000, or both.

§ 10503. Concealment, disposal, or conversion of property

A person that, with intent to defraud, knowingly conceals, removes, disposes of, or converts to the use of that person or any other person any property mortgaged or pledged to, or held by, the Administrator—

(1) shall be imprisoned not more than one year, fined not more than $1,000, or both; or

(2) if the value of the property exceeds $100, shall be imprisoned not more than 5 years, fined not more than $5,000, or both.

§ 10504. Misrepresentation of status as small business concern

(a) OFFENSE.—A person that, in writing, misrepresents the status of a concern or person as a small business concern, qualified HUBZone small business concern, small business concern owned and controlled by socially and economically disadvantaged individuals, or small business concern owned and controlled by women, in order to obtain for that person or any other person—

(1) a prime contract to be awarded under chapter 251, 253, 261, or 263;

(2) a subcontract to be awarded under chapter 233;

(3) a subcontract that is to be included as part or all of a goal contained in a subcontracting plan required under section 24303 of this title; or

(4) a prime contract or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references chapter 243 for a definition of program eligibility;

shall be subject to the penalties described in subsection (b).

(b) PENALTIES.—A person that violates subsection (a)—

(1) shall be imprisoned not more than 10 years, fined not more than $500,000 or both;

(2) shall be subject to the administrative remedies prescribed by chapter 38 of title 31;

(3) shall be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) on the basis that the misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and

(4) shall be ineligible for participation in any program or activity conducted under this subtitle or subtitle II or III for a period not to exceed 3 years.

§ 10505. False certification of past compliance

A person that falsely certifies past compliance with the requirements of section 23328 of this title—

(1) shall be imprisoned not more than 10 years, fined not more than $500,000 or both;

(2) shall be subject to the administrative remedies prescribed by chapter 38 of title 31;

(3) shall be subject to suspension and debarment as specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation) on the basis that the misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and

(4) shall be ineligible for participation in any program or activity conducted under this subtitle or subtitle II or III for a period not to exceed 3 years.

CHAPTER 107—PERIODIC REPORTS

Sec.
10701. Comprehensive annual report on the state of small business and on Administration operations.
10702. Annual report on expenditures.
10703. Annual report on secondary market operations.
10704. Annual report on impact of authority to impose secondary market fees.
10705. Annual report on needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans.
10706. Annual report on contract bundling.
10707. Annual report on business development program.
10708. Annual report on contract participation goals.
10709. Annual report on cost savings from breakout procurement center representatives.
10710. Annual reports on SBIRs, STTRs, and the FAST program.
10711. Annual report on women's business center program.
10712. Annual report of the Office of International Trade.
10713. Annual report on historical trends of the small business sector.
10714. Biennial report on accredited lenders program.
10715. Annual report on premier certified lenders program.
10716. Annual report on foreclosure and liquidation of loans under the certified development company program.
10717. Reports on disaster assistance.

§ 10701. Comprehensive annual report on the state of small business and on Administration operations

(a) IN GENERAL.—As soon as practicable each fiscal year, the Administrator shall submit to the President a comprehensive annual report.

(b) CONTENTS.—A report under subsection (a) shall include—

(1) a description of the state of small business in the Nation as a whole and in each State;

(2) a description of the operations of the Administration under this subtitle and subtitle II, including the general lending, disaster relief, Government regulation relief, procurement and property disposal, research and development, technical assistance, dissemination of data and information, and other functions under the jurisdiction of the Administration during the previous fiscal year;

(3) recommendations—

(A) for strengthening or improving the functions described in paragraph (2); or

(B) when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs;

(4) the names of the business concerns to which contracts are let and for which financing is arranged by the Administrator, including the amounts of the contracts and financings;

(5) the proportion of loans and other assistance under subtitle II and provided to minority small business concerns, the goals of the Administrator for the next fiscal year with respect to minority small business

concerns, and recommendations for improving assistance to minority small business concerns under subtitle II; and

(6)(A) a full and detailed account of operations under subtitle III that—

(i) discloses the amount of losses sustained by the Government as a result of such operations during the preceding fiscal year; and

(ii) includes an estimate of the total losses that the Government can reasonably expect to incur as a result of such operations during the then-current fiscal year;

(B) full and detailed accounts relating to—

(i) the Administrator's recommendations with respect to the feasibility and organization of a small business capital bank to encourage private financing of small business investment companies (as defined in section 30101 of this title) to replace Government financing of small business investment companies;

(ii) the Administrator's plans to ensure the provision of small business investment company financing to all areas of the country and to all eligible small business concerns, including steps taken to accomplish that;

(iii) steps taken by the Administrator to maximize recoupment of Government funds incident to the inauguration and administration of the small business investment company program and to ensure compliance with statutory and regulatory standards relating to the small business investment company program;

(iv) an accounting by the Director of the Office of Management and Budget with respect to Federal expenditures to business by executive agencies, specifying the proportion of those expenditures going to business concerns falling above and below small business size standards applicable to small business investment companies;

(v) an accounting by the Secretary of the Treasury with respect to tax revenues accruing to the Government from business concerns, specifying the source of those revenues by concerns falling above and below the small business size standards applicable to small business investment companies;

(vi) an accounting by the Secretary of the Treasury with respect to tax losses and increased tax revenues related to small business investment company financing of both individual and corporate business taxpayers;

(vii) recommendations of the Secretary of the Treasury with respect to additional tax incentives to improve and facilitate the operations of small business investment companies and to encourage

the use of their financing facilities by eligible small business concerns;

(viii) a report from the Securities and Exchange Commission enumerating actions undertaken by the Securities and Exchange Commission to simplify and minimize the regulatory requirements governing small business investment companies under the Federal securities laws and to eliminate overlapping regulation and jurisdiction as between the Securities and Exchange Commission, the Administration, and other agencies of the executive branch;

(ix) a report from the Securities and Exchange Commission with respect to actions taken to facilitate and stabilize the access of small business concerns (as defined in section 30101 of this title) to the securities markets; and

(x) actions undertaken by the Securities and Exchange Commission to simplify compliance by small business investment companies with the requirements of Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) and to facilitate the election to be taxed as regulated investment companies under section 851 of the Internal Revenue Code of 1986 (26 U.S.C. 851); and

(C) a full and detailed description or account relating to—

(i) the number of small business investment companies the Administrator licensed under subtitle III, the number of licensees (as defined in section 30101 of this title) that have been placed in liquidation, and the number of licensees that have surrendered their licenses in the previous year, identifying the amount of leverage (as defined in section 30101 of this title) each has received and the type of leverage instruments each has used;

(ii) the amount of leverage that each licensee received in the previous year and the types of leverage instruments each licensee used;

(iii) for each type of financing instrument, the sizes, geographic locations, and other characteristics of the small business investment companies using the financing instrument, including the extent to which small business investment companies have used the leverage from each instrument to make small business loans, equity investments, or both; and

(iv) the frequency with which each type of investment instrument has been used in the current year and a comparison of the current year with previous years.

§ 10702. Annual report on expenditures

(a) IN GENERAL.—As soon as practicable each fiscal year, the Administrator shall submit to the President a report showing as accurately as possible for the fiscal year the amount of funds appropriated to the Administration that the Administrator has expended in the conduct of each of the principal activities of the Administration such as lending, procurement, contracting, and providing technical and managerial aids.

(b) CONTENTS.—A report under subsection (a) shall disclose, separately for each type of loan made under sections 20503 to 20509 of this title and separately for all other loan programs, the number and amount of loans, the number of applications, the total amount applied for, and the number and amount of defaults for each type of equipment or service for which loans are authorized by subtitle II.

§ 10703. Annual report on secondary market operations

(a) IN GENERAL.—Not later than March 31 of each year, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the secondary market operations during the preceding calendar year.

(b) CONTENTS.—A report under subsection (a) shall include—

(1) the number and the total dollar amount of loans sold into the secondary market and the distribution of such loans by size of loan, size of lender, geographic location of lender, interest rate, maturity, lender servicing fees, whether the rate is fixed or variable, and premium paid;

(2) the number and dollar amount of loans resold in the secondary market with a distribution by size of loan, interest rate, and premiums;

(3) the number and total dollar amount of pools formed;

(4) the number and total dollar amount of loans in each pool;

(5) the dollar amount, interest rate, and terms on each loan in each pool and whether the rate is fixed or variable;

(6) the number, face value, interest rate, and terms of the trust certificates issued for each pool;

(7) to the maximum extent possible, the use by the lender of the proceeds of sales of loans in the secondary market for additional lending to small business concerns; and

(8) an analysis of the information reported under paragraphs (1) to (7) to assess the access of small business concerns to capital at reasonable rates and terms as a result of secondary market operations.

§ 10704. Annual report on impact of authority to impose secondary market fees

(a) DEFINITION OF SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY MINORITIES.—In this section, the term ''small business concerns owned and controlled by minorities'' includes a small business concern that is owned and controlled by individuals belonging to one of the designated groups listed in subclause (1)(B) of the contract clause described in section 24301(c) of this title.

(b) STUDY, MONITORING, AND EVALUATION.—The Administrator shall study, monitor, and evaluate the impact of subparagraphs (A) to (E) of section 10332(d)(5) of this title on—

(1) the ability of small business concerns owned and controlled by minorities, small business concerns owned and controlled by women, and other small business concerns to obtain financing; and

(2) the effectiveness, viability, and growth of the secondary market authorized by section 10332(c) of this title.

(c) ANNUAL REPORTS.—

(1) IN GENERAL.—The Administrator shall annually submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing the Administrator's findings and recommendations on the impact described in subsection (b), specifically including changes in the interest rates on financings provided to small business concerns owned and controlled by minorities, small business concerns owned and controlled by women, and other small business concerns through the use of the secondary market.

(2) FINDINGS AND RECOMMENDATIONS.—The report under paragraph (1) shall state findings and recommendations separately for the ethnic and gender components of the small business concerns described in paragraph (1).

§ 10705. Annual report on needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans

(a) IN GENERAL.—The Administrator shall annually submit to the Committee on Small Business and Entrepreneurship and Committee on Veterans Affairs of the Senate and the Committee on Small Business and Committee on Veterans Affairs of the House of Representatives a report on the needs of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans.

(b) CONTENTS.—A report under subsection (a) shall include information on—

(1)(A) the availability of Administration programs for small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans; and

(B) the degree of utilization of those programs by small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans during the preceding 12-month period, including statistical information on such utilization as compared with the small business community as a whole;

(2) the percentage and dollar value of Federal contracts awarded to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans during the preceding 12-month period, based on the data collected under section 27513 of this title; and

(3) proposals to improve the access of small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans to the assistance made available by the United States.

§ 10706. Annual report on contract bundling

(a) IN GENERAL.—In March of each year, using information maintained under section 25105(e) of this title, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on contract bundling.

(b) CONTENTS.—A report under subsection (a) shall include—

(1) information on the number (arranged by industrial classification) of small business concerns displaced as prime contractors as a result of the award of bundled contracts by Federal agencies; and

(2) a description of the activities with respect to previously bundled contracts of each Federal agency during the preceding year, including—

(A) information on the number and total dollar amount of all contract requirements that were bundled; and

(B) with respect to each bundled contract, information on—

(i) the justification for the bundling of contract requirements;

(ii) the cost savings realized by bundling the contract requirements over the life of the contract;

(iii) the extent to which maintaining the bundled status of contract requirements is projected to result in continued cost savings;

(iv) the extent to which the bundling of contract requirements complied with the procuring agency's small business subcontracting plan, including the total dollar value awarded to small business concerns as subcontractors and the total dollar value previously awarded to small business concerns as prime contractors; and

(v) the impact of the bundling of contract requirements on small business concerns unable to compete as prime contractors for the consolidated requirements and on the industries of such small business concerns, including a description of any changes to the proportion of any such industry that is composed of small business concerns.

§ 10707. Annual report on business development program

(a) IN GENERAL.—Not later than April 30 of each year, the Administrator shall submit to Congress a report on the business development program.

(b) CONTENTS.—

(1) NET WORTH OF PARTICIPATING INDIVIDUALS.—A report under subsection (a) shall disclose—

(A) the average personal net worth of individuals who own and control small business concerns that were initially certified for participation in the business development program during the immediately preceding fiscal year; and

(B) the dollar distribution of net worths, at $50,000 increments, of all such individuals determined to be socially and economically disadvantaged.

(2) DESCRIPTION AND ESTIMATE OF BENEFITS AND COSTS.—A report under subsection (a) shall include 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 the program participants that were performing contracts awarded under the business development program.

(3) PROGRAM PARTICIPANTS EXITING THE PROGRAM.—

(A) IN GENERAL.—A report under subsection (a) shall include a compilation and evaluation of the former program participants that exited the program during the immediately preceding 3 fiscal years.

(B) CONTENTS.—The compilation and evaluation under subparagraph (A) shall—

(i)(I) disclose the number of former program participants that are actively engaged in business operations; and

(II) for those former program participants, separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of the former program participants;

(ii)(I) disclose the number of former program participants that have ceased or substantially curtailed business operations; and

(II) describe the reasons for the cessation or curtailment; and

(iii) disclose the number of former program participants that have been acquired by other business concerns or organizations owned and controlled by other than socially and economically disadvantaged individuals.

(4) LIST OF PROGRAM PARTICIPANTS.—A report under subsection (a) shall include a list of all program participants that participated in the program during the preceding fiscal year that discloses, by State and by Administration region, for each program participant—

(A) the name of the program participant;

(B) the race or ethnicity and gender of the disadvantaged owners;

(C) the dollar value of all contracts received in the preceding year;

(D) the dollar amount of advance payments received under contracts awarded under the business development program; and

(E) a description (including (if appropriate) an estimate of the dollar value) of all benefits received under sections 20511 and 23327 of this title during the preceding year.

(5) CONTRACT AND OPTION VALUE.—A report under subsection (a) shall include the total dollar value of contracts and options awarded under this chapter during the preceding fiscal year—

(A) expressed as an absolute amount;

(B) expressed as a percentage of total sales—

(i) of all program participants during that year; and

(ii) of program participants in each of the 9 years of program participation; and

(C) expressed, at such dollar increments as the Administrator considers appropriate, for each 6-digit North American Industry

Classification System code under which the contracts and options were classified.

(6) ADDITIONAL RESOURCES OR AUTHORITIES.—A report under subsection (a) shall include a description of such additional resources or program authorities as may be required to provide the types of services needed over the next 2-year period to service the expected portfolio of program participants.

§ 10708. Annual report on contract participation goals

(a) REPORT BY THE ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall annually—

(A) compile and analyze the reports submitted by Federal agencies under section 25106(c) of this title; and

(B) submit the reports to the President and Congress.

(2) CONTENTS.—The Administrator's submission to the President shall include—

(A)(i) the Governmentwide goals for participation by qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and other small business concerns; and

(ii) the performance in attaining those goals;

(B)(i) the goals in effect for each Federal agency; and

(ii) each Federal agency's performance in attaining those goals;

(C)(i) an analysis of any failure to achieve the Governmentwide goals or any Federal agency goals; and

(ii) the actions planned by each Federal agency and approved by the Administrator to achieve the goals in the succeeding fiscal year;

(D) for each Federal agency and on a Governmentwide basis, the number and dollar value of contracts awarded to qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and other small business concerns through—

(i) noncompetitive negotiation;

(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals;

(iii) competition restricted to small business concerns; and

(iv) unrestricted competitions; and

(E) the number and dollar value of subcontracts awarded to qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and other small business concerns.

(b) REPORT BY THE PRESIDENT.—The President shall include the information required by subsection (a) in each annual report to Congress on the state of small business under section 45101(c) of this title.

§ 10709. Annual report on cost savings from breakout procurement center representatives

The Administrator shall annually submit to Congress a report that—

(1) describes the cost savings achieved during the year covered by the report through the efforts of breakout procurement center representatives assigned to major procurement centers under section 25110 of this title;

(2) contains an evaluation of the extent to which competition has been increased as a result of those efforts; and

(3) includes such other information relating to breakout procurement center representatives as the Administrator considers appropriate.

§ 10710. Annual reports on SBIRs, STTRs, and the FAST program

(a) SBIR AND STTR PROGRAMS.—

(1) IN GENERAL.—The Administrator, not less than annually, shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Science and Committee on Small Business of the House of Representatives a report on the SBIRs (as defined in section 26101 of this title) and STTRs (as defined in section 26101 of this title) of the Federal agencies and the Administrator's information and monitoring efforts relating to the SBIRs and STTRs.

(2) CONTENTS.—A report under paragraph (1) shall include—

(A) the data on output and outcomes collected under section 26302(a)(9) and paragraphs (9) and (14) of section 26322 of this title;

(B) the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns under each of the SBIRs and STTRs; and

(C) a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database under section 26341 of this title.

(b) FAST PROGRAM.—The Administrator shall annually submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Science and Committee on Small Business of the House of Representatives a report regarding—

(1) the number and amount of awards provided and cooperative agreements entered into under the FAST program (as defined in section 26345 of this title) during the preceding year;

(2) a list of recipients under section 26345 of this title, including their location and the activities being performed with the awards made or under the cooperative agreements entered into; and

(3) the mentoring networks and the mentoring database, as provided for under section 26345(f) of this title, including—

(A) the status of the inclusion of mentoring information in the database required by section 26341 of this title; and

(B) the status of the implementation and description of the usage of the mentoring networks.

§ 10711. Annual report on women's business center program

(a) IN GENERAL.—The Administrator shall annually submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the effectiveness of all projects conducted under chapter 273.

(b) CONTENTS.—A report under subsection (a) shall include information concerning, with respect to each women's business center—

(1) the number of individuals receiving assistance;

(2) the number of startup business concerns formed;

(3) the gross receipts of assisted business concerns;

(4) the employment increases or decreases of assisted business concerns;

(5) to the maximum extent practicable, increases or decreases in profits of assisted business concerns; and

(6) the most recent analysis and determination made by the Administrator under section 27307(a)(2) of this title.

§ 10712. Annual report of the Office of International Trade

The Office of International Trade shall annually 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 describes the progress that the Office of International Trade has made in carrying out section 10309.

§ 10713. Annual report on historical trends of the small business sector

The Administrator shall publish annually a report giving a comparative analysis and interpretation of the historical trends of the small business sector as reflected by the data acquired under section 10333 of this title.

§ 10714. Biennial report on accredited lenders program

The Administrator shall biennially submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the implementation of section 33107 of this title that includes data on the number of qualified development companies (as defined in section 33101 of this title) designated as accredited lenders, their debenture guarantee volume, their loss rates, the average processing time on their guarantee applications, and such other information as the Administrator considers appropriate.

§ 10715. Annual report on premier certified lenders program

(a) IN GENERAL.—The Administration shall annually submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the implementation of section 33108 of this title.

(b) CONTENTS.—A report under subsection (a) shall include—

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

(2) the debenture guarantee volume of those certified development companies;

(3) a comparison of the loss rate of premier certified lenders with the loss rate of accredited lenders under section 33107 of this title and the loss rate of other certified development companies under chapter 331, specifically comparing default rates and recovery rates on liquidations; and

(4) such other information as the Administrator considers appropriate.

§ 10716. Annual report on foreclosure and liquidation of loans under the certified development company program

(a) IN GENERAL.—Based on information provided by qualified development companies (as defined in section 33101 of this title) and the Administration, the Administrator shall annually submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the results of delegation of authority under section 33109 of this title.

(b) CONTENTS.—A report under subsection (a)—

(1) shall disclose, with respect to each loan foreclosed or liquidated by a qualified development company under section 33109 of this title, or for which losses were otherwise mitigated by the qualified development company pursuant to a workout plan under that section—

(A) the total cost of the project financed with the loan;

(B) the total original dollar amount guaranteed by the Administrator;

(C) the total dollar amount of the loan at the time of liquidation, foreclosure, or mitigation of loss;

(D) the total dollar losses resulting from the liquidation, foreclosure, or mitigation of loss; and

(E) the total recoveries resulting from the liquidation, foreclosure, or mitigation of loss, both as a percentage of the amount guaranteed and the total cost of the project financed;

(2) shall disclose, with respect to each qualified development company to which authority is delegated under section 33109 of this title, the totals of each of the amounts described in subparagraphs (A) to (E) of paragraph (1);

(3) shall disclose, with respect to all loans subject to foreclosure, liquidation, or mitigation under section 33109 of this title, the totals of each of the amounts described in subparagraphs (A) to (E) of paragraph (1);

(4) include a comparison between—

(A) the information provided under paragraph (3) with respect to the 12-month period preceding the date on which the report is submitted; and

(B) the same information with respect to loans foreclosed and liquidated, or otherwise treated, by the Administrator during the same period; and

(5)(A) shall disclose the number of times that the Administrator has failed to—

(i) approve or reject a liquidation plan in accordance with subparagraph (A)(ii) or a workout plan in accordance with subparagraph (C)(ii) of section 33109(c)(2) of this title; or

(ii) approve or deny a request for purchase of indebtedness under section 33109(c)(2)(B)(ii) of this title; and

(B) include specific information regarding—

(i) the reasons for the Administrator's failure; and

(ii) any delays that resulted.

§ 10717. Reports on disaster assistance

(a) DEFINITIONS.—In this section:

(1) MAJOR DISASTER UPDATE PERIOD.—The term ''major disaster update period'', with respect to a major disaster, means the period beginning on the date on which the President declares the major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under 21308 of this title) and ending on the date on which the declaration terminates.

(2) STATE.—The term ''State'' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

(b) MONTHLY ACCOUNTING REPORTS FOR MAJOR DISASTERS.—

(1) REPORTING REQUIREMENTS.—Not later than the fifth business day of each month during the applicable period for a major disaster, the Administrator shall submit to the Committee on Small Business and Entrepreneurship and Committee on Appropriations of the Senate and the Committee on Small Business and Committee on Appropriations of the House of Representatives a report on the operation of the disaster assistance programs for that major disaster during the preceding month.

(2) CONTENTS.—A report under paragraph (1) shall include—

(A)(i) the daily average lending volume, in number of loans and dollars, of each category of loan; and

(ii) the percentage by which each category has increased or decreased since the previous report;

(B)(i) the weekly average lending volume, in number of loans and dollars, of each category of loan; and

(ii) the percentage by which each category has increased or decreased since the previous report;

(C)(i) the amount of funding spent over the month for each category of loan, both in amount of appropriations and in program level; and

(ii) the percentage by which each category has increased or decreased since the previous report;

(D)(i) the amount of funding available for loans, in amount of appropriations and in program level, for each category of loan; and

(ii) the percentage by which each category has increased or decreased since the previous report, noting the source of any additional funding;

(E) an estimate of how long the available funding for loans will last, based on the spending rate;

(F)(i) the amount of funding spent over the month for staff engaged in the operation of the disaster assistance programs;

(ii) the number of staff engaged in the operation of the disaster assistance programs; and

(iii) the percentage by which the funding and number of staff engaged in the operation of the disaster assistance programs have increased or decreased since the previous report;

(G)(i) the amount of funding spent over the month for administrative costs of the disaster assistance programs; and

(ii) the percentage by which spending for those administrative costs has increased or decreased since the previous report;

(H)(i) the amount of funding available for salaries and expenses combined for operation of the disaster assistance programs; and

(ii) the percentage by which that funding has increased or decreased since the previous report, noting the source of any additional funding; and

(I) an estimate of how long the available funding for those salaries and expenses will last, based on the spending rate.

(c) WEEKLY DISASTER UPDATES FOR MAJOR DISASTERS.—

(1) IN GENERAL.—Each week during a major disaster update period, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the operation of the disaster assistance programs for the major disaster area.

(2) CONTENTS.—A report under paragraph (1) shall include—

(A)(i) the number of Administration staff performing loan processing, field inspection, and other duties for the major disaster; and

(ii) the allocations of the staff in the disaster field offices, disaster recovery centers, workshops, and other Administration offices nationwide;

(B)(i) the daily number of applications received from applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(C)(i) the daily number of applications pending application entry from applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(D)(i) the daily number of applications withdrawn by applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(E)(i) the daily number of applications summarily declined by the Administrator from applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(F)(i) the daily number of applications declined by the Administrator from applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(G)(i) the daily number of applications in process from applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(H)(i) the daily number of applications approved by the Administrator from applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(I)(i) the daily dollar amount of applications approved by the Administrator from applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(J)(i) the daily number of loans disbursed, both partially and fully, by the Administrator to applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(K)(i) the daily dollar amount of loans disbursed, both partially and fully, to applicants in the major disaster area; and

(ii) a breakdown of that number by State;

(L)(i) the number of applications approved, including dollar amount approved, and applications partially and fully disbursed, including dollar amounts, since the last report under paragraph (1); and

(M)(i) the declaration date, physical damage closing date, and economic injury closing date for the major disaster; and

(ii) the number of counties in the major disaster area.

(d) PERIODS WHEN ADDITIONAL DISASTER ASSISTANCE IS MADE AVAILABLE.—

(1) IN GENERAL.—During any period for which the Administrator declares eligibility for additional disaster assistance under section 21308 of this title, the Administrator shall, on a monthly basis, submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the disaster assistance operations of the Administrator with respect to the applicable major disaster.

(2) CONTENTS.—A report under paragraph (1) shall specify—

(A) the number of applications for disaster assistance distributed;

(B) the number of applications for disaster assistance received;

(C) the average time for the Administrator to approve or disapprove an application for disaster assistance;

(D) the number of disaster loans approved;

(E) the average time for initial disbursement of disaster loan proceeds; and

(F) the dollar amount of disaster loan proceeds disbursed.

(e) NOTICE OF NEED FOR SUPPLEMENTAL FUNDS.—On the date on which the Administrator notifies any committee of the Senate or the House of Representatives that supplemental funding is necessary for the disaster assistance programs in any fiscal year, the Administrator shall notify in writing the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives regarding the need for supplemental funds for the disaster assistance programs.

(f) REPORT ON CONTRACTING.—

(1) IN GENERAL.—Not later than 6 months after the date on which the President declares a major disaster, and every 6 months thereafter until the date that is 18 months after the date on which the major disaster is declared, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report regarding Federal contracts awarded as a result of the major disaster.

(2) CONTENTS.—A report under paragraph (1) shall include—

(A) the number of contracts awarded as a result of the major disaster;

(B) the number of contracts awarded to small business concerns as a result of the major disaster;

(C) the number of contracts awarded to women-owned business concerns and minority-owned business concerns as a result of the major disaster; and

(D) the number of contracts awarded to business concerns local to the major disaster area as a result of the major disaster.

(g) ANNUAL REPORTS ON DISASTER ASSISTANCE.—

(1) IN GENERAL.—Not later than 45 days after the end of a fiscal year, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the disaster assistance operations of the Administration for the fiscal year.

(2) CONTENTS.—A report under paragraph (1) shall—

(1) specify the number of Administration personnel involved in disaster assistance operations;

(2) describe any material changes to disaster assistance operations, such as changes to technologies used or to personnel responsibilities;

(3) describe and assess the effectiveness of the Administrator in responding to disasters during the fiscal year, including a description of the number and dollar amounts of loans made for damage and for economic injury; and

(4) describe the plans of the Administrator for preparing to respond to disasters during the next fiscal year.

CHAPTER 109—FUNDING

Sec.
10901. Commitments in full amounts provided by law.
10902. Program levels.
10903. Authorization of appropriations.

§ 10901. Commitments in full amounts provided by law

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator shall enter into commitments for direct loans and to guarantee loans, debentures, payment of rentals, or other amounts due under qualified contracts and other types of financial assistance, and enter into commitments to purchase debentures and preferred securities and to guarantee sureties against loss pursuant to programs under subtitles II and III, in the full amounts provided by law subject only to—

(1) the availability of qualified applications; and

(2) limitations contained in appropriations Acts.

(b) EFFECT OF SECTION.—Nothing in this section authorizes the Administrator to reduce or limit the authority of the Administrator to enter into a commitment described in subsection (a).

(c) MULTIPLE FISCAL YEARS.—Subject to approval in appropriations Acts, amounts authorized for preferred securities, debentures, or participating securities under chapter 303 may be obligated in one fiscal year and disbursed or guaranteed in any one or more of the 4 subsequent fiscal years.

§ 10902. Program levels

(a) FISCAL YEAR 2005.—The following program levels are authorized for fiscal year 2005:

(1) For the programs authorized by this subtitle and subtitle II, the Administrator may make—

(A) $75,000,000 in technical assistance grants, as provided in chapter 211; and

(B) $105,000,000 in direct loans, as provided in chapter 211.

(2) For the programs authorized by this subtitle and subtitle II, the Administrator may make $23,050,000,000 in deferred participation

loans and other financings. Of that sum, the Administrator may make—

(A) $16,500,000,000 in general business loans, as provided in division B of subtitle II;

(B) $6,000,000,000 in certified development company financings, as provided in section 20507 of this title and chapter 331;

(C) $500,000,000 in loans, as provided in section 20512 of this title; and

(D) $50,000,000 in loans, as provided in chapter 211.

(3) For the programs authorized by chapter 303, the Administrator may make—

(A) $4,250,000,000 in purchases of participating securities; and

(B) $3,250,000,000 in guarantees of debentures.

(4) For the programs authorized by chapter 321, the Administrator may enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved under section 32102(a)(4) of this title.

(5) The Administrator may make grants or enter into cooperative agreements for a total amount of $7,000,000 for SCORE.

(b) FISCAL YEAR 2006.—The following program levels are authorized for fiscal year 2006:

(1) For the programs authorized by this subtitle and subtitle II, the Administrator may make—

(A) $80,000,000 in technical assistance grants, as provided in chapter 211; and

(B) $110,000,000 in direct loans, as provided in chapter 211.

(2) For the programs authorized by this subtitle and subtitle II, the Administrator may make $25,050,000,000 in deferred participation loans and other financings. Of that sum, the Administrator may make—

(A) $17,000,000,000 in general business loans, as provided in division B of subtitle II;

(B) $7,500,000,000 in certified development company financings, as provided in section 20507 of this title and chapter 331;

(C) $500,000,000 in loans, as provided in section 20512 of this title; and

(D) $50,000,000 in loans, as provided in chapter 211.

(3) For the programs authorized by chapter 303, the Administrator may make—

(A) $4,500,000,000 in purchases of participating securities; and

(B) $3,500,000,000 in guarantees of debentures.

(4) For the programs authorized by chapter 321, the Administrator may enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved under section 32102(a)(4) of this title.

(5) The Administrator may make grants or enter into cooperative agreements for a total amount of $7,000,000 for SCORE.

(c) AMOUNT OF DEFERRED PARTICIPATION LOANS.—Except as may be otherwise specifically provided by law, the amount of deferred participation loans authorized in this section—

(1) means the net amount of the loan principal guaranteed by the Administrator and does not include any amount that is not guaranteed; and

(2) shall be available for a national program, except that the Administrator may use not more than an amount equal to 10 percent of the amount authorized each year for any special or pilot program directed to identified sectors of the small business community or to specific geographic regions of the United States.

§ 10903. Authorization of appropriations

(a) CERTAIN ADMINISTRATIVE EXPENSES.—For each fiscal year, there are authorized to be appropriated such sums as are necessary, to remain available until expended—

(1) to carry out the small business development center program, but not to exceed the annual funding level specified in section 27102 of this title;

(2) to pay the expenses of the National Small Business Development Center Advisory Board under section 27109 of this title;

(3) to pay the expenses of the information sharing system under section 27104(j) of this title;

(4) to pay the expenses of the Association for conducting the accreditation program under section 27111 of this title;

(5) to pay the expenses of the Administration, including salaries of examiners, for conducting examinations as part of the accreditation program conducted by the Association; and

(6) to pay for small business development center grants as directed by Congress.

(b) PROGRAMS FOR WHICH PROGRAM LEVELS ARE ESTABLISHED UNDER SECTION 10902.—

(1) IN GENERAL.—There are authorized to be appropriated to the Administration for each of fiscal years 2005 and 2006 such sums as are necessary to carry out—

(A) the provisions of this subtitle and subtitle II not elsewhere provided for (including salaries and expenses of the Administration and necessary loan capital for loans under the disaster loan program); and

(B) subtitle III.

(2) LIMITATIONS.—Notwithstanding any other provision of this subsection, for each of fiscal years 2005 and 2006, respectively—

(A) no funds are authorized to be used as loan capital for the loan program authorized by section 20512 of this title except by transfer from another Federal agency to the Administration, unless the program level authorized for general business loans under subsection (a)(2)(A) or (b)(2)(A) of section 10902 of this title is fully funded; and

(B) the Administrator may not approve loans on behalf of the Administration or on behalf of any other Federal agency, by contract or otherwise, under terms or conditions other than those specifically authorized under this subtitle or subtitle II or III, except that the Administrator may approve loans under section 20512 of this title in gross amounts of not more than $2,000,000.

(c) OFFICE OF ADVOCACY.—There is authorized to be appropriated to carry out section 10307 of this title $1,000,000, to remain available until expended.

(d) OFFICE OF VETERANS BUSINESS DEVELOPMENT.—There are authorized to be appropriated to carry out section 10313 of this title—

(1) $1,500,000 for fiscal year 2005; and

(2) $2,000,000 for fiscal year 2006.

(e) LOSSES AND INTEREST SUBSIDIES.—There are authorized to be appropriated for each fiscal year such sums as are necessary for losses and interest subsidies incurred by the accounts referred to in section 10332(a)(1) of this title.

(f) HUBZONE PROGRAM.—There is authorized to be appropriated to carry out chapter 253 $10,000,000 for each of fiscal years 2004 through 2006.

(g) FAST PROGRAM.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out the FAST program (including mentoring networks) under section 26345 of this title $10,000,000 for each of fiscal years 2001 through 2005.

(2) MENTORING DATABASE.—Of the total amount made available under paragraph (1) for fiscal years 2001 through 2005, a reasonable

amount, not to exceed a total of $500,000, may be used by the Administrator to carry out section 26345(f)(3) of this title.

(h) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM.—There are authorized to be appropriated to carry out chapter 271—

(1) $130,000,000 for fiscal year 2005; and

(2) $135,000,000 for fiscal year 2006.

(i) NATIONAL VETERANS BUSINESS DEVELOPMENT CORPORATION.—

(1) IN GENERAL.—Subject to paragraph (2), there are authorized to be appropriated to the National Veterans Business Development Corporation to carry out section 27514 of this title—

(A) $4,000,000 for fiscal year 2001;

(B) $4,000,000 for fiscal year 2002;

(C) $2,000,000 for fiscal year 2003; and

(D) $2,000,000 for fiscal year 2004.

(2) MATCHING REQUIREMENT.—

(A) FISCAL YEAR 2002.—The amount made available to the National Veterans Business Development Corporation for fiscal year 2002 may not exceed twice the amount that the Corporation certifies that it will provide for that fiscal year from sources other than the Federal Government.

(B) SUBSEQUENT FISCAL YEARS.—The amount made available to the National Veterans Business Development Corporation for fiscal year 2003 or 2004 may not exceed the amount that the Corporation certifies that it will provide for that fiscal year from sources other than the Federal Government.

(3) PRIVATIZATION.—The National Veterans Business Development Corporation shall institute and implement a plan to raise private funds and become a self-sustaining corporation.

(j) BUSINESS GRANTS AND COOPERATIVE AGREEMENTS.—There is authorized to be appropriated to carry out section 29102 of this title $6,600,000 for each of fiscal years 2001 through 2006, to remain available until expended.

(k) PAUL D. COVERDELL DRUG-FREE WORKPLACE PROGRAM.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out section 29104 of this title (other than section 29104(b)(2) of this title) $5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(2) SMALL BUSINESS DEVELOPMENT CENTERS.—Of the total amount made available under paragraph (1) for each of fiscal years

2005 and 2006, not more than the greater of 10 percent or $500,000 may be used to carry out section 27104(b)(20) of this title.

(3) ADDITIONAL AUTHORIZATION FOR TECHNICAL ASSISTANCE GRANTS.—There are authorized to be appropriated to carry out section 29104(b)(2) of this title $1,500,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph shall remain available until expended.

(4) LIMITATION ON ADMINISTRATIVE COSTS.—Not more than 5 percent of the total amount made available under this subsection for any fiscal year shall be used for administrative costs (determined without regard to the administrative costs of eligible intermediaries).

(*l*) NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM.—

(1) IN GENERAL.—There are authorized to be appropriated for fiscal years 2001 through 2006, to remain available until expended, the following sums:

(A) Such subsidy budget authority as is necessary to guarantee $150,000,000 of debentures under chapter 305.

(B) $30,000,000 to make grants under chapter 305.

(2) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited under section 30512(d) of this title are authorized to be appropriated only for the costs of examinations under section 30512 of this title and for the costs of other oversight activities with respect to the new markets venture capital company program.

(m) RENEWABLE FUEL CAPITAL INVESTMENT COMPANY PROGRAM.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Administrator may make $15,000,000 in operational assistance grants under section 30707 of this title for each of fiscal years 2008 and 2009.

(2) FUNDS COLLECTED FOR EXAMINATIONS.—Funds deposited under section 30711(d) of this title are authorized to be appropriated only for the costs of examinations under section 30711 of this title and for the costs of other oversight activities with respect to the renewable fuel capital investment company program.

Subtitle II—Loan, Contracting, and Related Assistance Programs

DIVISION A—GENERAL PROVISIONS

CHAPTER 201—GENERAL PROVISIONS

Sec.
20101. Certification of compliance with child support obligations.
20102. Authorities in carrying out programs for small business concerns in areas with high proportions of unemployed or low-income individuals and small business concerns owned by low-income individuals.

20103. Extension or renewal of loans.
20104. Deferral of repayment for active duty reservists.
20105. Ownership interest arising from community property law.

§ 20101. Certification of compliance with child support obligations

(a) IN GENERAL.—A recipient of financial assistance under this subtitle shall certify that the recipient is not more than 60 days delinquent under the terms of any—

(1) administrative order;

(2) court order; or

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

that requires the recipient to pay child support (as defined in section 459(i) of the Social Security Act (42 U.S.C. 659(i))).

(b) ENFORCEMENT.—The Administrator shall promulgate such regulations as are necessary to enforce compliance with this section.

§ 20102. Authorities in carrying out programs for small business concerns in areas with high proportions of unemployed or low-income individuals and small business concerns owned by low-income individuals

In carrying out section 20504 of this title and the business development program, the Administrator may—

(1) use, 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 use the services and facilities of the State or subdivision without reimbursement;

(2) accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this subtitle, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) accept voluntary and uncompensated services, notwithstanding section 1342 of title 31; and

(4)(A) employ experts and consultants or organizations of experts and consultants as authorized by section 3109 of title 5, except that no individual may be employed under this subsection for more than 100 days in any fiscal year;

(B) compensate individuals employed under subparagraph (A) at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including travel time;

(C) allow individuals employed under subparagraph (A), while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government service employed intermittently, while so employed; and

(D) notwithstanding section 3109(b) of title 5, renew contracts for employment under subparagraph (A) annually.

§ 20103. Extension or renewal of loans

(a) IN GENERAL.—The Administrator may extend the maturity of or renew a loan under the general business loan program, disaster loan program, or microloan program for additional periods not to exceed 10 years beyond the period stated in the loan if the extension or renewal will aid in the orderly liquidation of the loan.

(b) INAPPLICABILITY TO CERTAIN DISASTER LOANS.—Subsection (a) does not apply to a loan under the disaster loan program that has a term of more than 20 years.

§ 20104. Deferral of repayment for active duty reservists

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE RESERVIST.—The term ''eligible reservist'' means a member of a reserve component of the Armed Forces ordered to active duty during a period of military conflict.

(2) 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 the small business concern.

(3) PERIOD OF MILITARY CONFLICT.—The term ''period of military conflict'' means—

(A) a period of war declared by Congress;

(B) a period of national emergency declared by Congress or by the President; or

(C) a period of a contingency operation (as defined in section 101(a) of title 10).

(4) QUALIFIED BORROWER.—The term ''qualified borrower'' means—

(A) an individual who is an eligible reservist and who received a direct loan under the general business loan program or a disaster assistance program before being ordered to active duty; or

(B) a small business concern that received a direct loan under the general business loan program or a disaster assistance program before an eligible reservist, who is an essential employee, was ordered to active duty.

(b) DEFERRAL OF DIRECT LOANS.—

(1) IN GENERAL.—The Administrator shall, on written request, defer repayment of principal and interest due on a direct loan made under the general business loan program or a disaster assistance program if the loan was incurred by a qualified borrower.

(2) PERIOD OF DEFERRAL.—The period of deferral for repayment under paragraph (1) shall begin on the date on which the eligible reservist is ordered to active duty and terminate on the date that is 180 days after the date on which the eligible reservist is discharged or released from active duty.

(3) INTEREST RATE REDUCTION DURING DEFERRAL.—Notwithstanding any other provision of law, during the period of deferral under paragraph (2), the Administrator may reduce the interest rate on a loan qualifying for a deferral under this subsection.

(c) DEFERRAL OF LOAN GUARANTEES AND OTHER FINANCINGS.—The Administrator shall—

(1) encourage intermediaries participating in the microloan program to defer repayment of a microloan made with proceeds made available under the microloan program, if the microloan was incurred by a small business concern that is eligible to apply for assistance under section 21303 of this title; and

(2) establish guidelines to—

(A) encourage lenders and other intermediaries to defer repayment of, or provide other relief relating to—

(i) loan guarantees under the general business loan program and financings under the certified development company program that were incurred by small business concerns that are eligible to apply for assistance under section 21303 of this title; and

(ii) loan guarantees provided under the microloan program if the intermediary provides relief to a small business concern under this subsection; and

(B) 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 subsection.

§ 20105. Ownership interest arising from community property law

Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this subtitle shall be determined without regard to any ownership interest of a

spouse arising solely from the application of the community property law of a State for purposes of determining marital interests.

DIVISION B—GENERAL BUSINESS LOAN PROGRAM

CHAPTER 203—GENERAL PURPOSE LOANS

Sec.
20301. Loan authority.
20302. Methods of participation.
20303. No credit elsewhere.
20304. Sound and secure requirement.
20305. Level of participation in guaranteed loans.
20306. Maximum loan amounts.
20307. Interest rates.
20308. Prepayment charges.
20309. Maximum term.
20310. Deferment of payments.
20311. Guarantee fees.
20312. Certified lenders program.
20313. Penalty fee on late payment.
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20315. Notification to Congress of significant policy or administrative changes.
20316. Pilot programs.
20317. Calculation of subsidy rate.
20318. Leasing.
20319. Real estate appraisals.
20320. Express loan program.
20321. Loan application preparation and loan servicing by qualified development companies.
20322. Increased veteran/reservist participation program.

§ 20301. Loan authority

To the extent and in such amounts as are provided in advance in appropriation Acts, the Administrator may make loans to small business concerns (including a small business concern owned by a qualified Indian tribe) for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital.

§ 20302. Methods of participation

The Administrator may make a loan under section 20301 of this title—

(1) directly; or

(2) in cooperation with a bank or other lending institution or any other entity through an agreement to participate on an immediate or deferred (guaranteed) basis.

§ 20303. No credit elsewhere

(a) IN GENERAL.—No financial assistance shall be extended under the general business loan program if the applicant can obtain credit elsewhere.

(b) IMMEDIATE PARTICIPATION.—No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(c) DIRECT FINANCING.—No direct financing may be made unless it is shown that a participation is not available.

§ 20304. Sound and secure requirement

(a) IN GENERAL.—A loan made under the general business loan program shall be of such sound value or so secured as reasonably to ensure repayment.

(b) REASONABLE DOUBT.—In applying subsection (a) in the case of a loan to assist a public or private organization for the disabled or to assist a disabled individual as provided in section 20503 of this title, any reasonable doubt shall be resolved in favor of the applicant.

(c) ENERGY MEASURES.—Recognizing that greater risk may be associated with a loan for an energy measure as provided in section 20505 of this title, in applying subsection (a) in the case of such a loan—

(1) factors in determining sound value shall include—

(A) quality of the product or service;

(B) technical qualifications of the applicant or employees of the applicant;

(C) sales projections; and

(D) the financial status of the applicant; and

(2) the loan need not be as sound as is generally required for a loan under the general business loan program.

(d) NO DELEGATION OF AUTHORITY.—The authority conferred by this subsection shall be exercised solely by Administration personnel and shall not be delegated to other than Administration personnel.

§ 20305. Level of participation in guaranteed loans

(a) IN GENERAL.—Except as provided in subsection (b), in an agreement to participate in a loan on a deferred basis under the general business loan program (including a loan made under the preferred lenders program), participation by the Administrator shall be equal to—

(1) 75 percent of the balance of the financing outstanding at the time of disbursement of the loan, if the balance exceeds $150,000; or

(2) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if the balance is less than or equal to $150,000.

(b) REDUCED PARTICIPATION ON REQUEST.—

(1) IN GENERAL.—The guarantee percentage specified by subsection (a) for a loan under the general business loan program may be reduced on the request of the participating lender.

(2) PROHIBITION.—The Administrator shall not use the guarantee percentage requested by a participating lender under paragraph (1) as a criterion for establishing priorities in approving loan guarantee requests under the general business loan program.

(c) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Notwithstanding subsection (a), under an agreement to participate in a loan on a deferred basis under the export working capital program, participation by the Administrator shall not exceed 90 percent.

(d) REFINANCING OF INDEBTEDNESS.—On any portion of a loan used to refinance indebtedness held by a bank or other lending institution, the Administrator shall limit the amount of deferred participation to 80 percent of the amount of the loan at the time of disbursement.

§ 20306. Maximum loan amounts

(a) IN GENERAL.—Except as provided in subsection (b) and subject to subsection (c), no loan shall be made to a borrower under the general business loan program if the total amount outstanding and committed (on a deferred basis, through a participation on an immediate basis, or directly) to the borrower under the general business loan program and microloan program would exceed $1,500,000 (or if the gross loan amount would exceed $2,000,000).

(b) SMALL BUSINESS CONCERN IN INDUSTRY ENGAGED IN OR ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—A loan solely for the purposes provided in section 20510 of this title may be made under the general business loan program and microloan program if the total amount outstanding and committed (on a deferred basis) to the borrower under the general business loan program would not exceed $1,750,000, of which not more than $1,250,000 may be used for working capital, supplies, or financings under section 20508 of this title for export purposes.

(c) DIRECT LOANS; PARTICIPATION ON AN IMMEDIATE BASIS.—No loan shall be made under the general business loan program, 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.

§ 20307. Interest rates

(a) MAXIMUM RATE PRESCRIBED BY THE ADMINISTRATOR.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest that may be charged, taken, received, or reserved, the maximum legal rate of interest on a financing made on a deferred basis under the general business loan program shall not exceed a rate prescribed by the Administrator.

(b) DIRECT LOANS AND IMMEDIATE PARTICIPATION LOANS.—The rate of interest for the Administrator's share of any direct loan or immediate participation loan under the general business loan program 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 0.125 percent,

and an additional amount as determined by the Administrator, but not to exceed one percent per year.

(c) PREFERRED LENDERS PROGRAM.—The maximum interest rate for a loan under the general business loan program that is guaranteed under the preferred lenders program shall not exceed the maximum interest rate, as determined by the Administrator, applicable to other loans guaranteed under the general business loan program.

(d) LOANS TO ASSIST THE DISABLED.—In the case of a loan under the general business loan program to assist a public or private organization for the disabled or to assist a disabled individual as provided in section 20503 of this title, the interest rate shall be 3 percent per year.

(e) PAYMENT OF ACCRUED INTEREST.—

(1) IN GENERAL.—A bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under the general business loan program 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.

(2) LOANS SOLD ON SECONDARY MARKET.—If a loan described in paragraph (1) is sold on the secondary market, the amount of interest paid to a bank or other lending institution described in that paragraph 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.

(3) APPLICABILITY.—Paragraphs (1) and (2) do not apply to loans made on or after October 1, 2000.

§ 20308. Prepayment charges

(a) IN GENERAL.—A borrower that prepays a loan guaranteed under the general business loan program shall remit to the Administrator a subsidy recoupment fee calculated in accordance with subsection (b) if—

(1) the loan is for a term of not less than 15 years;

(2) the prepayment is voluntary;

(3) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

(4) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

(b) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under subsection (a) shall be—

(1) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

(2) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

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

§ 20309. Maximum term

(a) IN GENERAL.—Except as provided in subsection (b), no loan (including a loan renewal or extension) shall be made under the general business loan program for a term or terms exceeding 25 years.

(b) EXCEPTION.—Any portion of a loan that is made under the general business loan program for the purpose of acquiring real property or constructing, converting, or expanding a facility may have a term of 25 years plus such additional period as is estimated may be required to complete the construction, conversion, or expansion.

§ 20310. Deferment of payments

The Administrator may defer payments on the principal of a loan under the general business loan program for a grace period, and use such other methods as the Administrator considers necessary and appropriate, to ensure the successful establishment and operation of a small business concern.

§ 20311. Guarantee fees

(a) IN GENERAL.—With respect to a loan guaranteed under the general business loan program (other than a loan that is repayable in one year or less), the Administrator shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

(1) A guarantee fee of not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

(2) A guarantee fee of 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.

(3) A guarantee fee of not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

(4) In addition to the guarantee fee under paragraph (3), 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.—A lender participating in the general business loan program may retain not more than 25 percent of a fee collected under subsection (a)(1).

§ 20312. Certified lenders program

(a) IN GENERAL.—The Administrator may establish a certified lenders program for lenders that establish their knowledge of Administration laws (including regulations) concerning the guaranteed loan program and their proficiency in program requirements.

(b) SUSPENSION OR REVOCATION.—The designation of a lender as a certified lender shall be suspended or revoked at any time that the Adminis-

trator determines that the lender is not adhering to regulations prescribed by the Administrator or that the loss experience of the lender is excessive as compared with that of other lenders, but the suspension or revocation shall not affect any outstanding guarantee.

(c) UNIFORM AND SIMPLIFIED LOAN FORM.—To encourage all lending institutions and other entities making loans under the general business loan program to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administrator shall develop, and allow participating lenders to solely use, a uniform and simplified loan form for such loans.

(d) LOAN LIQUIDATION.—

(1) IN GENERAL.—The Administrator may permit a lender participating in the certified lenders program to liquidate a loan made with a guarantee from the Administrator in accordance with a liquidation plan approved by the Administrator.

(2) AUTOMATIC APPROVAL.—If the Administrator does not approve or deny a request for approval of a liquidation plan within 10 business days after the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days), the request shall be deemed to be approved.

§ 20313. Penalty fee on late payment

The Administrator may permit a participating lender to impose and collect a reasonable penalty fee on late payment of a loan guaranteed under the general business loan program in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

§ 20314. Yearly fee

(a) DEFINITION OF COST.—In this section, the term ''cost'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(b) FEE.—With respect to a loan approved under the general business loan program, the Administrator 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 Administrator in the Administrator's annual budget request to Congress, as necessary to reduce to zero the cost to the Administrator of making guarantees under the general business loan program.

(c) PAYER.—The yearly fee assessed under subsection (b) shall be payable by the participating lender and shall not be charged to the borrower.

(d) LOWERING OF BORROWER FEES.—If the Administrator determines that fees paid by lenders and by small business borrowers for guarantees

under the general business loan program may be reduced, consistent with reducing to zero the cost to the Administrator of making such guarantees—

(1) the Administrator shall first consider reducing fees paid by small business borrowers under paragraphs (1) to (3) of section 20311(a) of this title, to the maximum extent possible; and

(2) fees paid by small business borrowers shall not be increased above the levels in effect on December 8, 2004.

§ 20315. Notification to Congress of significant policy or administrative changes

Not later than 15 days before making any significant policy or administrative change affecting the operation of the general business loan program, the Administrator shall notify the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives of the change.

§ 20316. Pilot programs

(a) DEFINITION OF PILOT PROGRAM.—In this section, the term ''pilot program'' means a lending program initiative, project, innovation, or other activity not specifically authorized by law.

(b) LIMITATION.—Not more than 10 percent of the number of loans guaranteed in any fiscal year under the general business loan program may be awarded as part of a pilot program commenced on or after October 1, 1996.

(c) LOW DOCUMENTATION LOAN PROGRAM.—

(1) IN GENERAL.—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.

(2) REGULATIONS.—The Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

§ 20317. Calculation of subsidy rate

All fees, interest, and profits received and retained by the Administrator under the general business loan program shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing loans under this subtitle.

§ 20318. Leasing

In addition to such other lease arrangements as the Administrator may authorize, 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 the general business loan program if the borrower

permanently occupies and uses not less than 60 percent of the total business space in the property.

§ 20319. Real estate appraisals

With respect to a loan under the general business loan program that is secured by commercial real property, an appraisal of the property by a State licensed or certified appraiser—

(1) shall be required by the Administrator in connection with any such loan for more than $250,000; or

(2) may be required by the Administrator or the lender in connection with any such loan for $250,000 or less, if an appraisal is necessary for appropriate evaluation of creditworthiness.

§ 20320. Express loan program

(a) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to lenders that the Administrator considers qualified to make express loans.

(b) EFFECT OF DESIGNATION.—Designation as an express lender for purposes of making an express loan does not preclude the lender from taking any other action authorized by the Administrator for that lender under the general business loan program.

(c) RETENTION OF DESIGNATION OF EXPRESS LENDER.—An express lender shall retain that designation unless—

(1) the Administrator determines that the express lender has violated the law (including regulations); or

(2) the Administrator modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(d) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the express loan program is $350,000.

(e) OPTION TO PARTICIPATE.—Except as otherwise provided in this section, the Administrator shall take no regulatory, policy, or administrative action, without regard to whether the action requires notification under section 20315 of this title, that has the effect of requiring a lender to make an express loan.

(f) RENEWABLE ENERGY AND ENERGY EFFICIENCY.—The Administrator may make a loan under the express loan program for the purpose of—

(1) purchasing a renewable energy system; or

(2) carrying out an energy efficiency project for a small business concern.

§ 20321. Loan application preparation and loan servicing by qualified development companies

Notwithstanding any other provision of law, a qualified development company (as defined in section 33101 of this title) may—

(1) prepare applications for deferred participation loans under the general business loan program; and

(2) service loans under the general business loan program and charge a reasonable fee for servicing the loans.

§ 20322. Increased veteran/reservist participation program

(a) DEFINITIONS.—In this section:

(1) COST.—The term ''cost'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(2) PILOT PROGRAM.—The term ''pilot program'' means the pilot program established under subsection (b).

(3) VETERAN/RESERVIST PARTICIPATION LOAN.—The term ''veteran/reservist participation loan'' means a loan made under the general business loan program to a small business concern owned and controlled by veterans or by reservists.

(b) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program under which the Administrator shall reduce the fees for veteran/reservist participation loans.

(c) DURATION.—The pilot program shall terminate at the end of the second full fiscal year after the date on which the Administrator establishes the pilot program.

(d) MAXIMUM PARTICIPATION.—A veteran/reservist participation loan shall include the maximum participation levels by the Administrator permitted for loans made under the general business loan program.

(e) FEES.—

(1) IN GENERAL.—The fee on a veteran/reservist participation loan shall be equal to 50 percent of the fee otherwise applicable to that loan under section 20311 of this title.

(2) WAIVER.—The Administrator may waive paragraph (1) for a fiscal year if—

(A) for the fiscal year before that fiscal year, the annual estimated rate of default of veteran/reservist participation loans exceeds that of loans made under the general business loan program that are not veteran/reservist participation loans;

(B) the cost to the Administrator of making loans under the general business loan program is greater than zero and the cost is directly attributable to the cost of making veteran/reservist participation loans; and

(C) no additional source of revenue authority is available to reduce the cost of making loans under the general business loan program to zero.

(3) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under paragraph (2), the Administrator—

(A) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the general business loan program is not greater than zero; and

(B) shall reinstate the fee reductions under paragraph (1) when the conditions in paragraph (2) no longer apply.

(4) NO INCREASE OF FEES.—The Administrator shall not increase the fees under 20311 of this title on loans made under the general business loan program that are not veteran/reservist participation loans as a direct result of the pilot program.

(f) GAO REPORT.—

(1) IN GENERAL.—Not later than one year after the date on which the pilot program terminates, the Comptroller General 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.

(2) CONTENTS.—The report under paragraph (1) shall include—

(A) the number of veteran/reservist participation loans for which fees were reduced under the pilot program;

(B) a description of the impact of the pilot program on the general business loan program;

(C) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(D) recommendations for improving the pilot program.

CHAPTER 205—SPECIAL PURPOSE LOANS

Sec.
20501. Applicability of chapter 203.
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§ 20501. Applicability of chapter 203

The provisions of chapter 203 apply to this chapter except to the extent that any such provision is inconsistent with a provision of this chapter.

§ 20502. Residential or commercial construction or rehabilitation for sale

(a) IN GENERAL.—The Administrator may provide a loan under the general business loan program to finance residential or commercial construction or rehabilitation for sale.

(b) LIMITATION.—A loan under subsection (a) shall not be used primarily for the acquisition of land.

§ 20503. The disabled

The Administrator may provide a guaranteed loan under the general business loan program to assist a public or private organization for the disabled or a disabled individual (including a service-disabled veteran) in establishing, acquiring, or operating a small business concern.

§ 20504. Unemployed or low-income individuals

(a) IMPLEMENTATION.—The general business loan program shall be used to—

(1) assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in small business concerns, with special attention to, and particular emphasis on the preservation or establishment of, small business concerns that are—

(A) located in urban or rural areas with high proportions of unemployed or low-income individuals; or

(B) owned by low-income individuals; and

(2) mobilize for those objectives private as well as public managerial skills and resources.

(b) LOAN AUTHORITY.—The Administrator may provide a loan under the general business loan program to a small business concern or to a qualified person seeking to establish a small business concern if the Administrator determines that providing the loan will further the purposes stated in subsection (a).

§ 20505. Energy measures

(a) IN GENERAL.—The Administrator may provide a loan under the general business loan program to provide assistance (including startup assistance) to a small business concern to enable the small business concern to design architecturally, or engineer, manufacture, distribute, market, install, or service, an energy measure.

(b) LIMITATION.—The proceeds of a loan under subsection (a) shall not be used primarily for research and development.

§ 20506. Pollution control facilities

(a) IN GENERAL.—The Administrator may provide a deferred participation loan under the general business loan program to finance the planning,

design, or installation of a pollution control facility for the purposes specified in section 404 of the Small Business Investment Act of 1958 (15 U.S.C. 694–1), as in effect before the date of repeal of that section.

(b) LIMIT ON AMOUNT.—A loan under subsection (a) may not result in a total amount outstanding and committed (on a deferred basis) to a borrower under the general business loan program and microloan program of more than $1,000,000.

§ 20507. Certified development companies

The Administrator may provide financing under the general business loan program to certified development companies for the purposes of, and subject to the restrictions in, the certified development company program.

§ 20508. 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.

(b) RATE OF INTEREST.—A bank or participating lending institution may establish such a rate of interest on a financing under subsection (a) as is legal and reasonable.

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

(d) MARKETING OF EXPORT FINANCING PROGRAM.—The Administrator shall aggressively market the export working capital program to small business concerns.

§ 20509. Qualified employee trusts

(a) DEFINITION OF QUALIFIED EMPLOYEE TRUST.—In this section:

(1) TRUST MAINTAINED BY SMALL BUSINESS CONCERN.—The term ''qualified employee trust'', with respect to a small business concern, means a trust—

(A) that forms part of an employee stock ownership plan (as defined in section 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)) that—

(i) is maintained by the small business concern; and

(ii) provides that each participant in the plan is entitled to direct the plan as to the manner in which voting rights under qualifying employer securities (as defined in section 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e))

that are allocated to the account of the participant are to be exercised with respect to a corporate matter that (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

(B) the trustee of which enters into an agreement with the Administrator that is binding on the trust and on the small business concern and provides that—

(i) a loan guaranteed under the general business loan program shall be used solely for the purchase of qualifying employer securities of the small business concern;

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

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

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

(2) TRUST MAINTAINED BY EMPLOYEE ORGANIZATION.—A trust maintained by an employee organization may be treated as a qualified employee trust with respect to a small business concern in accordance with regulations prescribed under subsection (f).

(b) IN GENERAL.—The Administrator may guarantee a loan under the general business loan program to a qualified employee trust with respect to a small business concern, on the same basis as if the qualified employee trust were the same entity as the small business concern, for the purpose of purchasing stock of the small business concern under a plan approved by the Administrator that, when carried out, results in the qualified employee trust owning at least 51 percent of the stock of the small business concern.

(c) PLAN.—

(1) SUBMISSION WITH APPLICATION.—A plan requiring approval under subsection (b) shall be submitted to the Administrator by the trustee of the qualified employee trust with the application for a loan guarantee.

(2) AGREEMENT.—The plan shall include an agreement with the Administrator that is binding on the qualified employee trust and on the small business concern and provides that—

(A) not later than the date on which the loan guaranteed under subsection (b) is repaid (or as soon after that date as is consistent with the requirements of section 401(a) of the Internal Revenue Code of 1986 (26 U.S.C. 401(a))), at least 51 percent of the total stock of the small business concern shall be allocated to the accounts of at least 51 percent of the employees of the small business concern who are entitled to share in the allocation;

(B) there will be periodic reviews of the role in the management of the small business concern of employees to whose accounts stock is allocated; and

(C) there will be adequate management to ensure management expertise and continuity.

(d) CRITERIA.—

(1) IN GENERAL.—Except as provided in paragraph (2), in determining whether to guarantee a loan under this section, the Administrator shall not use the individual business experience or personal assets of employee-owners as criteria.

(2) EXCEPTION.—To the that extent that any employee-owner assumes managerial responsibilities, the Administrator may consider the business expertise of that employee-owner.

(e) TREATMENT OF CORPORATION AS SMALL BUSINESS CONCERN.—For purposes of this section, a corporation that is controlled by any other person shall be treated as a small business concern if the corporation would, after the plan under subsection (c) is carried out, be treated as a small business concern.

(f) REGULATIONS RELATING TO TREATMENT OF A TRUST MAINTAINED BY AN EMPLOYEE ORGANIZATION.—The Administrator may prescribe regulations under which a trust maintained by an employee organization may be treated as a qualified employee trust with respect to a small business concern if—

(1) the employee organization represents at least 51 percent of the employees of the small business concern;

(2) the small business concern maintains a plan that—

(A) is an employee benefit plan that is designed to invest primarily in qualifying employer securities (as defined in section 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e)));

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

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

(D) meets such other requirements (similar to requirements applicable to employee stock ownership plans (as defined in section 4975(e) of the Internal Revenue Code of 1986 (26 U.S.C. 4975(e))) as the Administrator may prescribe; and

(3) in the case of a loan guarantee under the general business loan program, the employee organization enters into an agreement with the Administrator that is described in subsection (a)(1)(B).

(g) REPORTS.—The Administrator shall—

(1) compile a separate list of applications for assistance under this section, indicating which applications are accepted and which denied; and

(2) periodically submit to Congress a report on the status of employee-owned firms assisted by the Administrator.

§ 20510. International trade

(a) IN GENERAL.—If the Administrator determines that a loan guaranteed under the general business loan program 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 provide a loan guarantee to assist the small business concern in—

(1) 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 a good or service involved in international trade; or

(2) the refinancing of existing indebtedness that is not structured with reasonable terms and conditions.

(b) SECURITY.—A loan under this section 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.

(c) ENGAGEMENT IN INTERNATIONAL TRADE.—For purposes of this section, a small business concern shall be considered to be engaged in inter-

national 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) ADVERSE EFFECT OF INTERNATIONAL TRADE.—For purposes of this section, a small business concern shall be considered to be adversely affected by international trade if, as determined by the Administrator, the small business concern—

(1) is confronting increased competition with foreign firms in the relevant market; and

(2) is injured by such competition.

(e) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subsection (d)(2), the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce under chapter 3 of title II of the Trade Act of 1974 (19 U.S.C. 2341 et seq.).

§ 20511. Business development

(a) IN GENERAL.—The Administrator may make a loan under the general business loan program to a small business concern that is eligible for assistance under the business development program.

(b) REQUIREMENTS.—Assistance may be provided under subsection (a) if the Administrator determines that—

(1) the type and amount of assistance requested by a small business concern is not otherwise available on reasonable terms from other sources;

(2) with the assistance, the small business concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(3) the proceeds of the assistance will be used within a reasonable time—

(A) for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material; or

(B) to supply the small business 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 ensure a well-balanced national economy; and

(4) the assistance is of such sound value as reasonably to ensure that the terms under which the assistance is provided will not be breached by the small business concern.

(c) LIMIT ON AMOUNT.—

(1) IN GENERAL.—No loan shall be made under this section if the total amount outstanding and committed (on a deferred basis, through a participation on an immediate basis, or directly) to the borrower under the general business loan program would exceed $750,000.

(2) AMOUNT OF PARTICIPATION.—Subject to paragraph (1), in an agreement to participate in a loan on a deferred (guaranteed) basis, participation by the Administrator shall be not less than 85 percent of the balance of the financing outstanding at the time of disbursement.

(d) RATE OF INTEREST.—The rate of interest on a financing made on a deferred (guaranteed) basis shall be an amount that is legal and reasonable.

(e) LIMITATIONS.—

(1) IN GENERAL.—A financing under this section shall be subject to the limitations stated in this subsection.

(2) IMMEDIATE FINANCING.—No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(3) DIRECT FINANCING.—No direct financing may be made unless it is shown that a participation is unavailable.

(f) SECURED DEBT INSTRUMENT.—A direct loan or the Administrator's share of an immediate participation loan under this section shall be any secured debt instrument—

(1) that is subordinated by its terms to all other borrowings of the issuer;

(2) the rate of interest on which does 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 0.125 percent;

(3) the term of which is not more than 25 years;

(4) the principal on which is amortized at such a rate as the Administrator considers appropriate; and

(5) the interest on which is payable not less often than annually.

§ 20512. Closure of defense installations; termination of defense programs; veterans and certain other individuals associated with defense

(a) DEFINITION OF QUALIFIED INDIVIDUAL.—In this section, the term ''qualified individual'' means—

(1) a member of the Armed Forces honorably discharged from active duty involuntarily or under a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

(2) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired under a program offering inducements to encourage early retirement; or

(3) 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 under a program offering inducements to encourage voluntary separation or early retirement) due to the termination or substantial reduction of a Department of Defense program.

(b) LOANS.—The Administrator may make a loan on a guaranteed basis under the general business loan program—

(1) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

(A) the closure or substantial reduction of a Department of Defense installation; or

(B) the termination or substantial reduction of a Department of Defense program on which the small business concern was a prime contractor or subcontractor or supplier at any tier; or

(2) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small business concern.

(c) RESOLUTION OF DOUBT.—Recognizing that greater risk may be associated with a loan to a small business concern described in subsection (b)(1), in making a determination regarding the sound value of the proposed loan under section 20304, any reasonable doubt concerning the small business concern's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant.

(d) AMOUNTS OF LOANS.—Loans under this section shall be authorized in such amounts as are provided in advance in appropriation Acts for the purposes of loans under this section.

(e) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this section, the Administrator shall develop procedures to ensure, to the maximum extent practicable, that the assistance is used for projects that—

(1) have the greatest potential for—

(A) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

(B) preventing the loss of jobs by employees of small business concerns described in subsection (b)(1); and

(2) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

§ 20513. Loans for energy efficient technologies

(a) DEFINITIONS.—In this section:

(1) COST.—The term ''cost'' has the meaning given the term in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a).

(2) COVERED ENERGY EFFICIENCY LOAN.—The term ''covered energy efficiency loan'' means a loan—

(A) made under the general business loan program; and

(B) the proceeds of which are used to—

(i) purchase energy efficient designs, equipment, or fixtures; or

(ii) reduce the energy consumption of the borrower by 10 percent or more.

(3) PILOT PROGRAM.—The term ''pilot program'' means the pilot program established under subsection (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 on which 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 division.

(e) FEES.—

(1) 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 20311 of this title.

(2) WAIVER.—The Administrator may waive paragraph (1) for a fiscal year if—

(A) 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 division that are not covered energy efficiency loans;

(B) the cost to the Administrator of making loans under this division—

(i) is greater than zero; and

(ii) is directly attributable to the cost of making covered energy efficiency loans; and

(C) no additional sources of revenue authority are available to reduce the cost of making loans under this division to zero.

(3) EFFECT OF WAIVER.—If the Administrator waives the reduction of fees under paragraph (2), the Administrator—

(A) shall not assess or collect fees in an amount greater than necessary to ensure that the cost of the program under this division is not greater than zero; and

(B) shall reinstate the fee reductions under paragraph (1) when the conditions in paragraph (2) no longer apply.

(4) NO INCREASE OF FEES.—The Administrator shall not increase the fees under section 20311 of this title on loans made under this division that are not covered energy efficiency loans as a direct result of the pilot program.

(f) GAO REPORT.—

(1) IN GENERAL.—Not later than one year after the date on which the pilot program terminates, the Comptroller General 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.

(2) CONTENTS.—The report under paragraph (1) shall include—

(A) the number of covered energy efficiency loans for which fees were reduced under the pilot program;

(B) a description of the energy efficiency savings with the pilot program;

(C) a description of the impact of the pilot program on the program under this division;

(D) an evaluation of the efficacy and potential fraud and abuse of the pilot program; and

(E) recommendations for improving the pilot program.

CHAPTER 207—SMALL BUSINESS LENDING COMPANIES AND NON-FEDERALLY REGULATED LENDERS

Sec.
20701. Authority to regulate.
20702. Capital directive.
20703. Civil action.
20704. Revocation or suspension of loan authority; cease and desist orders.
20705. Removal or suspension of management officials.
20706. Appointment of receiver.
20707. Taking of possession of assets.
20708. Reports.

§ 20701. Authority to regulate

The Administrator—

(1) may supervise the safety and soundness of small business lending companies and non-federally regulated lenders;

(2) in accordance with the purposes of this subtitle, may—

(A) regulate small business lending companies;

(B) set capital standards for small business lending companies;

(C) examine small business lending companies; and

(D) enforce laws governing small business lending companies; and

(3) in accordance with the purposes of this subtitle, may—

(A) regulate non-federally regulated lenders;

(B) examine non-federally regulated lenders; and

(C) enforce laws governing the lending activities of non-federally regulated lenders under the general business loan program.

§ 20702. Capital directive

(a) 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 the small business lending company to increase capital to such level as the Administrator determines will result in the safe and sound operation of the small business lending company.

(b) LIMIT ON DELEGABILITY.—The Administrator may not delegate the authority granted under subsection (a) except to an Associate Deputy Administrator.

(c) REGULATIONS.—The Administrator shall issue regulations outlining the conditions under which the Administrator may determine the level of capital under subsection (a).

§ 20703. Civil action

If a small business lending company violates this subtitle or subtitle I, the Administrator may bring a civil action in United States district court to terminate the rights, privileges, and franchises of the small business lending company under this subtitle or subtitle I.

§ 20704. Revocation or suspension of loan authority; cease and desist orders

(a) REVOCATION OR SUSPENSION OF LOAN AUTHORITY.—

(1) IN GENERAL.—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 under the general business loan program—

(A) for false statements knowingly made in any written submission required under this subtitle;

(B) for omission of a material fact from any written submission required under this subtitle;

(C) for willful or repeated violation of this subtitle;

(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this subtitle; or

(E) for violation of any cease and desist order of the Administrator under this chapter.

(2) LIMITATION ON DELEGABILITY.—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 the action.

(3) PROCEDURE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (c).

(B) SUSPENSION BEFORE HEARING.—

(i) IN GENERAL.—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 under subsection (c).

(ii) HEARING.—If the Administrator issues a suspension under clause (i), the Administrator shall, within 2 business days after issuance of the suspension, follow the procedure specified in subsection (c).

(C) ACTION BY THE ADMINISTRATOR AFTER HEARING BY ADMINISTRATIVE LAW JUDGE.—

(i) IN GENERAL.—A revocation or suspension under paragraph (1) shall be made by the Administrator, except that the Administrator shall delegate to an administrative law judge appointed under section 3105 of title 5 the authority to conduct any hearing required under subsection (c).

(ii) BASIS OF DECISION.—The Administrator shall base the decision to revoke or suspend on the record of the hearing.

(4) EFFECTIVE PERIOD OF SUSPENSION.—A suspension under paragraph (1) shall remain in effect until the Administrator makes a decision under paragraph (3)(C) 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.

(5) NOTIFICATION OF BORROWERS.—On revocation of the authority of a small business lending company or non-federally regulated lender under paragraph (1), the small business lending company or non-federally regulated lender shall, and the Administrator may, notify borrow-

ers of the revocation and of the appointment of a new entity to service the borrowers' loans.

(b) CEASE AND DESIST ORDERS.—

(1) IN GENERAL.—If a small business lending company, a non-federally regulated lender, or other person violates this subtitle or subtitle I or is engaging or is about to engage in any act or practice that constitutes or will constitute a violation of this subtitle or subtitle I, the Administrator, after an opportunity for hearing under subsection (c), may order that—

(A) the small business lending company, non-federally regulated lender, or other person cease and desist from engaging in the act or practice or in any failure to act;

(B) the small business lending company, non-federally regulated lender, or other person take such action or to refrain from such action as the Administrator considers necessary to ensure compliance with this subtitle; or

(C) the authority of the small business lending company or non-federally regulated lender to lend be suspended under subsection (a).

(2) LIMITATION ON DELEGABILITY.—The Administrator may delegate the authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take the action.

(3) ORDER BEFORE HEARING.—

(A) IN GENERAL.—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 under subsection (c).

(B) HEARING.—If the Administrator issues a cease and desist order under subparagraph (A), the Administrator shall within 2 business days follow the procedures specified in subsection (c).

(c) PROCEDURE.—

(1) ORDER TO SHOW CAUSE.—

(A) IN GENERAL.—Before revoking or suspending authority under subsection (a) or issuing a cease and desist order under subsection (b), the Administrator shall serve an order to show cause on 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.

(B) CONTENTS.—An order under subparagraph (A) shall—

(i) 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

(ii) state that a hearing will be held before an administrative law judge at a time and place stated in the order.

(2) HEARING.—A hearing shall be conducted under sections 554, 556, and 557 of title 5.

(3) ORDER OF REVOCATION OR SUSPENSION; CEASE AND DESIST ORDER.—

(A) IN GENERAL.—If, after hearing or a waiver of hearing, 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 the order.

(B) CONTENTS.—An order under subparagraph (A) shall—

(i) include a statement of the findings of the Administrator and the grounds and reasons for the findings; and

(ii) specify the effective date of the order.

(C) SERVICE.—The Administrator shall cause an order under subparagraph (A) to be served on the small business lending company, non-federally regulated lender, or other person that is subject to the order.

(4) WITNESSES.—A witness summoned before the Administrator shall be paid by the party at whose instance the witness is called the same fees and mileage that are paid witnesses in the courts of the United States.

(d) FINAL AGENCY ACTION.—An order under subsection (c)(3) is final agency action for purposes of chapter 7 of title 5.

(e) JUDICIAL REVIEW.—An adversely affected party shall have 20 days from the date of issuance of an order under subsection (c)(3) to seek judicial review in United States district court.

§ 20705. Removal or suspension of management officials

(a) DEFINITION OF MANAGEMENT OFFICIAL.—In this section, the term ''management official'' means an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of a small business lending company's or non-federally regulated lender's activities under the general business loan program.

(b) REMOVAL OF MANAGEMENT OFFICIAL.—

(1) NOTICE.—The Administrator may serve on a management official a written notice of the Administrator's intention to remove that management official if, in the opinion of the Administrator, the management official—

(A) willfully and knowingly commits a substantial violation of—

(i) this subtitle or subtitle I (including any regulation issued under this subtitle or subtitle I);

(ii) a final cease and desist order under this subtitle; or

(iii) any agreement under this subtitle by—

(I) the management official; or

(II) the small business lending company or non-federally regulated lender in which the management official is a participant; or

(B) willfully and knowingly commits a substantial breach of a fiduciary duty of that participant as a management official, if the violation or breach of fiduciary duty is one involving personal dishonesty on the part of the management official.

(2) CONTENTS.—A notice under paragraph (1) shall—

(A) contain a statement of the facts constituting grounds for the notice; and

(B) state a time and place at which a hearing under paragraph (3) will be held on the notice.

(3) HEARING.—

(A) TIMING.—A hearing under sections 554, 556, and 557 of title 5 shall be held not earlier than 30 nor 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, for good cause; or

(ii) the Attorney General.

(B) CONSENT.—Unless the management official appears at a hearing under this subsection in person or by an authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under paragraph (1).

(4) ORDER OF REMOVAL.—

(A) IN GENERAL.—In the event of consent under paragraph (3)(B), or if on the record made at a hearing under this section, 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 considers appropriate.

(B) EFFECTIVENESS.—An order under subparagraph (A) shall—

(i) take effect 30 days after the date of service on the subject small business lending company or non-federally regulated lender and the management official concerned (except in

the case of an order issued on consent as described in paragraph (3)(B), which shall become effective at the time specified in the order); and

(ii) remain effective and enforceable, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Administrator or a court in accordance with this chapter.

(c) AUTHORITY TO SUSPEND OR PROHIBIT PARTICIPATION.—

(1) IN GENERAL.—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 non-federally regulated lender a management official by written notice to that effect served on the management official.

(2) PROHIBITED ACTIVITIES.—A suspension or prohibition under paragraph (1) may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under the general business loan program.

(3) EFFECTIVENESS.—A suspension or prohibition under paragraph (1)—

(A) shall take effect on service of notice under subsection (b); and

(B) unless stayed by a court in proceedings under paragraph (4), shall remain in effect—

(i) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (b); 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.

(4) JUDICIAL REVIEW OF SUSPENSION PRIOR TO HEARING.—Not later than 10 days after a management official is suspended or prohibited from participation under paragraph (1), the management official may apply to a United States 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 on the management official under subsection (b).

(d) AUTHORITY TO SUSPEND ON CRIMINAL CHARGES.—

(1) IN GENERAL.—If a management official is charged in an 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 on 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 in which the management official is a participant described in subsection (a).

(2) EFFECTIVENESS.—A suspension or prohibition under paragraph (1) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or by order of a United States district court.

(3) AUTHORITY ON CONVICTION.—

(A) IN GENERAL.—If a judgment of conviction with respect to an offense described in paragraph (1) is entered against a management official, at such time as the judgment is not subject to further judicial review, the Administrator may issue and serve on the management official an order removing the management official, effective on service of a copy of the order on the small business lending company or non-federally regulated lender in which the management official is a participant described in subsection (a).

(B) JUDGMENT NOT SUBJECT TO FURTHER JUDICIAL REVIEW.—For purposes of subparagraph (A), further judicial review does not include the possibility of review of a petition for a writ of habeas corpus.

(4) AUTHORITY ON DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in paragraph (1) shall not preclude the Administrator from instituting proceedings under section 20704 of this title.

(e) NOTIFICATION TO SMALL BUSINESS LENDING COMPANY OR NON-FEDERALLY REGULATED LENDER.—A copy of a notice required to be served on a management official under this chapter shall also be served on the small business lending company or non-federally regulated lender in which the management official is a participant described in subsection (a).

(f) DECISION.—After a hearing under this section, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall—

(1) render a decision in the matter (which shall include findings of fact on which its decision is predicated); and

(2) issue and cause to be served on each party to the proceeding an order or orders consistent with this chapter.

(g) FINAL AGENCY ACTION.—A decision under subsection (f) shall constitute final agency action for purposes of chapter 7 of title 5.

(h) JUDICIAL REVIEW.—An adversely affected party shall have 20 days from the date of issuance of the order to seek judicial review in United States district court.

§ 20706. Appointment of receiver

(a) IN GENERAL.—In a civil action under this division, the court may—

(1) take exclusive jurisdiction over a small business lending company or non-federally regulated lender; and

(2) appoint a receiver to hold and administer the assets of the small business lending company or non-federally regulated lender.

(b) APPOINTMENT OF ADMINISTRATOR.—On request of the Administrator, the court may appoint the Administrator as a receiver under subsection (a).

§ 20707. Taking of possession of assets

(a) TAKING OF POSSESSION OF LOAN PORTFOLIO.—If a small business lending company or 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 the loans to a third party by means of a receiver appointed under section 20706 of this title.

(b) TAKING OF POSSESSION OF SERVICING ACTIVITIES.—If a small business lending company or 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 the servicing rights to a third party by means of a receiver appointed under section 20706 of this title.

§ 20708. Reports

(a) CIVIL PENALTY FOR FAILURE TO FILE.—

(1) IN GENERAL.—A small business lending company or non-federally regulated lender that violates a regulation or written directive issued by the Administrator regarding the filing of a 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 the report, unless it is shown that the violation is due to reasonable cause and not due to willful neglect.

(2) ENFORCEMENT.—A civil penalty under paragraph (1) may be enforced in a civil action brought by the Administrator.

(3) NONAPPLICABILITY TO CERTAIN SMALL BUSINESS LENDING COMPANIES.—Paragraph (1) does not apply to an affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

(b) EXEMPTION.—

(1) IN GENERAL.—If the Administrator determines that granting an exemption would not be inconsistent with the public interest or the protection of the Administration, the Administrator may exempt a small business lending company or non-federally regulated lender from subsection (a)—

(A) in whole or in part; and

(B) on such terms and conditions and for such period of time as the Administrator considers necessary and appropriate.

(2) PROCEDURE.—The Administrator may grant an exemption under paragraph (1)—

(A) by regulation prescribed after an opportunity for notice and comment; or

(B) on application of an interested party, at any time previous to a violation described in subsection (a), by order, after notice and opportunity for hearing under sections 554, 556, and 557 of title 5.

(c) ALTERNATIVE REQUIREMENTS.—The Administrator may for purposes of this section make any alternative requirement that the Administrator considers to be appropriate to a situation.

DIVISION C—MICROLOAN PROGRAM

CHAPTER 211—MICROLOAN PROGRAM

Sec.
21101. Definitions.
21102. Establishment of microloan program.
21103. Purposes of microloan program.
21104. Eligibility for participation.
21105. Loans to intermediaries; loans by intermediaries to small business concerns.
21106. Marketing, management, and technical assistance grants to intermediaries.
21107. Private sector borrowing technical assistance grants.
21108. Grants for management, marketing, technical assistance, and related services.

§ 21101. Definitions

In this chapter:

(1) INTERMEDIARY.—The term ''intermediary'' means—

(A) a private, nonprofit entity;

(B) a private, nonprofit community development corporation;

(C) a consortium of private, nonprofit organizations or nonprofit community development corporations;

(D) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county,

or municipal government (or any agency of a State, county, or municipal government), in a geographic area—

(i) in which no application is received from an eligible nonprofit organization; or

(ii) with respect to which the Administrator determines that the needs of the geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or

(E) an agency of or nonprofit entity established by a Native American Tribal Government;

that seeks to borrow or has borrowed funds from the Administrator to make microloans to small business concerns under the microloan program.

(2) MICROLOAN.—The term ''microloan'' means a short-term, fixed rate loan of not more than $35,000, made by an intermediary to a startup, newly established, or growing small business concern.

(3) RURAL AREA.—The term ''rural area'' means a political subdivision or unincorporated area—

(A) in a nonmetropolitan county (as defined by the Secretary of Agriculture) or its equivalent; or

(B) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Administrator determines the political subdivision or unincorporated area to be rural.

(4) STATE.—The term ''State'' includes the District of Columbia, Puerto Rico, the United States Virgin Islands, Guam, and American Samoa.

§ 21102. Establishment of microloan program

There is established within the Administration a microloan program.

§ 21103. Purposes of microloan program

The purposes of the microloan program are—

(1) to assist women, low-income, veteran, and minority entrepreneurs and business owners and other such individuals possessing the capability to operate successful business concerns;

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

(3) to make loans to eligible intermediaries to enable the 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;

(4) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable the intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(5) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable the 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;

(6) to report to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

(7) to establish a welfare-to-work microloan initiative to test the feasibility of supplementing the technical assistance grants provided under sections 21106 and 21107 of this title 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, to adequately assist those individuals in—

(A) establishing small business concerns; and

(B) eliminating their dependence on that assistance.

§ 21104. Eligibility for participation

An intermediary shall be eligible to receive loans and grants under sections 21105 and 21106 of this title if the intermediary has at least one year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of the microloan program, intensive marketing, management, and technical assistance to its borrowers.

§ 21105. Loans to intermediaries; loans by intermediaries to small business concerns

(a) IN GENERAL.—Under the microloan program, the Administrator may make direct loans to eligible intermediaries for the purpose of making microloans to small business concerns under this section.

(b) LOAN APPLICATIONS.—

(1) IN GENERAL.—As part of an application for a loan, an intermediary shall submit to the Administrator a description of—

(A) the type of businesses to be assisted;

(B) the size and range of loans to be made;

(C) the geographic area to be served, including a description of the economic, poverty, and unemployment characteristics of the area;

(D) the status of small business concerns in the area to be served, including an analysis of their credit and technical assistance needs;

(E) any marketing, management, and technical assistance to be provided in connection with a loan made under this chapter;

(F) the local economic credit markets, including the costs associated with obtaining credit locally;

(G) the qualifications of the applicant to carry out the purposes of the microloan program; and

(H) any plan to involve other technical assistance providers (such as counselors from SCORE or small business development centers) or private sector lenders in assisting selected business concerns.

(2) SELECTION OF INTERMEDIARIES.—In selecting intermediaries to participate in the microloan program, the Administrator shall give priority to applicants that provide loans in amounts averaging not more than $10,000.

(c) INTERMEDIARY CONTRIBUTION.—As a condition of a loan under subsection (a), the Administrator shall require an intermediary to contribute not less than 15 percent of the loan amount in cash from a non-Federal source.

(d) LOAN LIMITS.—A loan shall not be made under the microloan program if the total amount outstanding and committed (on a deferred basis, through a participation on an immediate basis, or directly) to one intermediary (excluding outstanding grants) under the general business loan program and microloan program would, as a result of the loan, exceed $750,000 in the first year of the intermediary's participation in the microloan program or $3,500,000 in any subsequent year of the intermediary's participation in the microloan program.

(e) LOAN TERM.—A loan made by the Administrator under this chapter shall be for a term of 10 years.

(f) DELAYED PAYMENTS.—Except for a loan loss reserve fund under subsection (i), the Administrator shall not require repayment of principal or interest on a loan made to an intermediary under this chapter during the first year of the loan.

(g) NO FEE OR COLLATERAL.—Except for a loan loss reserve fund under subsection (i), the Administrator shall not charge any fee or require collat-

eral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under the microloan program.

(h) INTEREST RATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), a loan made by the Administrator to an intermediary under this chapter 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 0.125 percent.

(2) RATES APPLICABLE TO CERTAIN SMALL LOANS.—A loan made by the Administrator 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 0.125 percent.

(3) MULTIPLE SITES OR OFFICES.—The interest rate determined under paragraph (1) or (2) shall apply to each separate loanmaking site or office of an intermediary only if the site or office meets the requirements of that paragraph.

(4) RATE BASIS.—The applicable rate of interest under this subsection—

(A) for the first year of an intermediary's participation in the microloan program, shall be applied retroactively based on the actual lending practices of the intermediary as determined by the Administrator before the end of that year; and

(B) for each subsequent year of an intermediary's participation in the microloan program, shall be based on the actual lending practices of the intermediary during the term of the intermediary's participation in the microloan program.

(i) LOSS RESERVE OF INTERMEDIARIES.—

(1) IN GENERAL.—The Administrator shall by regulation require an intermediary to establish and maintain a loan loss reserve fund until all obligations owed to the Administrator under the microloan program are repaid.

(2) LEVEL OF LOAN LOSS RESERVE FUND.—

(A) IN GENERAL.—Subject to subparagraph (C), 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.

(B) REVIEW OF LOAN LOSS RESERVE.—

(i) IN GENERAL.—After the initial 5 years of an intermediary's participation in the microloan program, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary.

(ii) REVIEW PERIOD.—An intermediary that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

(C) REDUCTION OF LOAN LOSS RESERVE.—Subject to subparagraph (D), 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.

(D) 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—

(i) the average annual loss rate for the intermediary during the preceding 5-year period is less than 15 percent; and

(ii) no other factors exist that may impair the ability of the intermediary to repay all obligations owed to the Administrator under this chapter.

(j) LOANS BY INTERMEDIARIES TO SMALL BUSINESS CONCERNS.—

(1) IN GENERAL.—From funds made available to an intermediary under the microloan program, the intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

(2) LOAN AMOUNT.—

(A) PORTFOLIO REQUIREMENT.—To the extent practicable, an intermediary that operates under the microloan program shall maintain a microloan portfolio with an average loan size of not more than $15,000.

(B) UNAVAILABILITY OF COMPARABLE CREDIT.—An intermediary may make a loan under the microloan program of more than $20,000 to a small business concern only if the small business concern demonstrates that—

(i) it is unable to obtain credit elsewhere at comparable interest rates; and

(ii) it has good prospects for success.

(C) MAXIMUM AMOUNT.—An intermediary shall not—

(i) make a loan under this chapter of more than $35,000; or

(ii) have outstanding or committed to any one borrower more than $35,000.

(3) INTEREST LIMIT.—Notwithstanding any provision of law of any State (including the constitution of a 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 chapter shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administrator—

(A) 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

(B) 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.

(4) REVIEW RESTRICTION.—The Administrator shall not review individual microloans made by intermediaries prior to approval.

(5) ESTABLISHMENT OF CHILD CARE OR TRANSPORTATION BUSINESSES.—In addition to other eligible small business concerns, a borrower under the microloan program may include an individual who will use the loan proceeds to establish—

(A) a for-profit or nonprofit child care establishment; or

(B) a business providing a for-profit transportation service.

(k) PROGRAM FUNDING FOR MICROLOANS.—

(1) NUMBER OF PARTICIPANTS.—Under the microloan program, the Administrator may fund, on a competitive basis, not more than 300 intermediaries.

(2) ALLOCATION.—

(A) MINIMUM ALLOCATION.—Subject to the availability of appropriations, of the total amount of new loan funds made available for award under the microloan program for each fiscal year, the Administrator shall make available for award in each State an amount equal to the sum of—

(i) the lesser of—

(I) $800,000; or

(II) 1/55 of the total amount of new loan funds made available for award under the microloan program for that fiscal year; and

(ii) any additional amount, as determined by the Administrator.

(B) REDISTRIBUTION.—If, at the beginning of the third quarter of a fiscal year, the Administrator determines that any portion of the amount made available to carry out the microloan program is unlikely to be made available under subparagraph (A) during that fiscal year, the Administrator may make that portion available for award in any one or more States without regard to subparagraph (A).

(*l*) EQUITABLE DISTRIBUTION OF INTERMEDIARIES.—In approving microloan program applicants and providing funding to intermediaries under the microloan program, the Administrator shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small business concerns in all industries located throughout each State, particularly industries located in urban areas and industries located in rural areas.

§ 21106. Marketing, management, and technical assistance grants to intermediaries

(a) IN GENERAL.—In conjunction with a loan to an intermediary under section 21105 of this title, the Administrator may make a grant to the eligible intermediary for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under the microloan program.

(b) GRANT AMOUNT.—

(1) IN GENERAL.—An intermediary that receives a loan under section 21105 of this title shall be eligible to receive a grant in an amount equal to not more than 25 percent of the total outstanding balance of loans made to the intermediary under the microloan program.

(2) INTERMEDIARY CONTRIBUTION.—

(A) IN GENERAL.—As a condition of a grant under paragraph (1), the Administrator shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from a non-Federal source.

(B) FORM.—In addition to cash or other direct funding, a contribution under subparagraph (A) may include indirect costs or in-kind contributions paid for under a non-Federal program.

(c) ADDITIONAL TECHNICAL ASSISTANCE GRANTS FOR MAKING CERTAIN LOANS.—

(1) IN GENERAL.—An intermediary that has a portfolio of loans under the microloan program that averages not more than $10,000 during the period of the intermediary's participation in the microloan

program shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under the microloan program, in addition to any grant made under subsection (b).

(2) USE.—A grant under paragraph (1) shall be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under the microloan program.

(d) MULTIPLE SITES OR OFFICES.—Eligibility for a grant under subsection (b) or (c) shall be determined separately for each loanmaking site or office of an intermediary.

(e) ASSISTANCE TO CERTAIN SMALL BUSINESS CONCERNS.—

(1) IN GENERAL.—An intermediary may expend an amount not to exceed 25 percent of the funds received under subsection (a) to provide information and technical assistance to small business concerns that are prospective borrowers under section 21108 of this title.

(2) TECHNICAL ASSISTANCE.—An intermediary may provide technical assistance under paragraph (1) through a third party contract.

§ 21107. Private sector borrowing technical assistance grants

(a) IN GENERAL.—The Administrator may 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 the assistance includes working with the grant recipient to secure loans in amounts not to exceed $35,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

(b) GRANT AMOUNTS.—The Administrator may make not more than 55 grants annually under subsection (a), each in an amount not to exceed $200,000.

(c) GRANT RECIPIENT CONTRIBUTION.—

(1) IN GENERAL.—As a condition of a grant under subsection (a), the Administrator shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from a non-Federal source.

(2) FORM.—In addition to cash or other direct funding, a contribution under paragraph (1) may include indirect costs or in-kind contributions paid for under a non-Federal program.

§ 21108. Grants for management, marketing, technical assistance, and related services

(a) IN GENERAL.—The Administrator may procure technical assistance for intermediaries participating in the microloan program to ensure that the

intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate a successful microloan program.

(b) ASSISTANCE AMOUNT.—The Administrator shall transfer 7 percent of the annual appropriation for loans and loan guarantees under this chapter to the Administration's Salaries and Expense Account for the specific purpose of providing one 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 specified in subsection (a).

(c) WELFARE-TO-WORK MICROLOAN INITIATIVE.—Of amounts made available to carry out the welfare-to-work microloan initiative under section 21103(7) of this title for any fiscal year, the Administrator 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 the grantees 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.

DIVISION D—DISASTER ASSISTANCE PROGRAMS

CHAPTER 213—DISASTER LOAN PROGRAM

Sec.
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§ 21301. Physical loss disaster loans

(a) IN GENERAL.—Except as to agricultural enterprises, to the extent and in such amounts as are provided in advance in appropriation Acts, the

Administrator may make such a loan (directly or in cooperation with a bank or other lending institution through an agreement to participate on an immediate or deferred (guaranteed) basis) as the Administrator determines to be necessary or appropriate to repair, rehabilitate, or replace property, real or personal, damaged or destroyed by or as a result of a natural or other disaster.

(b) LOAN AMOUNT.—

(1) IN GENERAL.—The amount of a loan under subsection (a) shall be equal to 100 percent of the amount of the loss, minus any amount compensated for by insurance or otherwise.

(2) PROTECTION FROM FUTURE DISASTERS.—The Administrator may increase the amount of a loan under subsection (a) by up to 20 percent of the aggregate costs of the damage or destruction (whether or not compensated for by insurance or otherwise) if the Administrator determines the increase to be necessary or appropriate to protect the damaged or destroyed property from future disasters by taking mitigating measures, including construction of retaining walls and sea walls, grading and contouring land, relocating utilities, and modifying structures.

(3) LIMITATION ON LOAN AMOUNT.—

(A) IN GENERAL.—No loan under this section shall be made if the total amount outstanding and committed to the borrower under the disaster loan program would exceed $1,500,000 for any one disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administrator may waive the $1,500,000 limitation.

(B) MAJOR SOURCE OF EMPLOYMENT.—For purposes of determining whether a nonprofit applicant that owns a premises constitutes a major source of employment under subparagraph (A), the employees of 2 or more concerns that share the premises as a common business premises shall be aggregated.

(4) LIMITATION ON REDUCTION OF LOAN AMOUNT.—

(A) IN GENERAL.—The Administrator shall not reduce the amount of a loan—

(i) for any homeowner on account of loss of real estate to less than $100,000 for any one disaster; or

(ii) for any homeowner or lessee on account of loss of personal property to less than $20,000 for any one disaster.

(B) REFINANCING.—The $100,000 and $20,000 amounts in subparagraph (A) are in addition to any refinancing for which a loan applicant is eligible.

(c) REFINANCINGS.—

(1) IN GENERAL.—A loan or guarantee may be made to refinance a mortgage or other lien against a totally destroyed or substantially damaged home or business concern (other than an agricultural enterprise).

(2) REQUIREMENTS.—A loan or guarantee under paragraph (1) shall not be made unless the Administrator determines that—

(A) the applicant is not able to obtain credit elsewhere; and

(B) the property is to be repaired, rehabilitated, or replaced.

(3) AMOUNT.—The amount refinanced under paragraph (1)—

(A) shall not exceed the amount of physical loss sustained; and

(B) shall be reduced to the extent that the mortgage or lien is satisfied by insurance or otherwise.

(d) COLLATERAL.—The Administrator shall not require collateral for a loan of $14,000 (or such greater amount as the Administrator determines to be appropriate in the event of a major disaster) or less that is made under this section.

§ 21302. Economic injury disaster loans

(a) DEFINITIONS.—In this section:

(1) DISASTER.—The term ''disaster'' includes—

(A) a drought;

(B) a below average water level in one or more of the Great Lakes or on any other body of water in the United States that supports commerce by small business concerns; and

(C) an ice storm or blizzard.

(2) DISASTER AREA.—The term ''disaster area'' includes—

(A) a county determined to be a disaster by the President, the Secretary of Agriculture, or the Administrator; and

(B) a county contiguous to a county described in subparagraph (A).

(b) LOANS.—Except as to agricultural enterprises, to the extent and in such amounts as are provided in advance in appropriation Acts, the Administrator may make such a loan (directly or in cooperation with a bank or other lending institution through an agreement to participate on an immediate or deferred (guaranteed) basis) as the Administrator determines to be necessary or appropriate to a small business concern, private nonprofit organization, or small agricultural cooperative located in a disaster area if—

(1) the Administrator determines that the small business concern, private nonprofit organization, or agricultural cooperative has suffered a substantial economic injury as a result of the disaster;

(2)(A) the disaster constitutes—

(i) a major disaster;

(ii) a natural disaster, as determined by the Secretary of Agriculture under section 321 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1961), in which case, assistance under this section may be provided to farm-related and nonfarm-related small business concerns, subject to the other applicable requirements of this section; or

(iii) a disaster, as determined by the Administrator; or

(B) if no disaster described in subparagraph (A) is declared, the Governor of a State in which a disaster has occurred certifies to the Administrator that small business concerns, private nonprofits organizations, or small agricultural cooperatives—

(i) have suffered economic injury as a result of the disaster; and

(ii) are in need of financial assistance that is not available on reasonable terms in the disaster area; and

(3) the Administrator determines that the applicant is not able to obtain credit elsewhere.

(c) PROMPT RESPONSE TO CERTIFICATION.—Not later than 30 days after the date of receipt of a certification by a Governor of a State under subsection (b)(2)(B), the Administrator shall respond in writing to the Governor on the Administrator's determination regarding the certification, stating the reasons for the determination.

(d) LIMITATION ON LOAN AMOUNT.—

(1) IN GENERAL.—No loan under this section shall be made if the total amount outstanding and committed to a borrower under the disaster loan program would exceed $1,500,000 for any one disaster unless the borrower constitutes a major source of employment in a disaster area, in which case the Administrator may waive the $1,500,000 limitation.

(2) MAJOR SOURCE OF EMPLOYMENT.—For purposes of determining whether a nonprofit applicant that owns a premises constitutes a major source of employment under paragraph (1), the employees of 2 or more concerns that share the premises as a common business premises shall be aggregated.

(e) NURSERIES.—The Administrator shall not withhold disaster assistance under this section to a nursery that is a victim of a drought disaster.

§ 21303. Loans to assist small business concerns that suffer injury as a result of an essential employee's being ordered to active military duty

(a) DEFINITIONS.—In this section:

(1) 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 the small business concern.

(2) PERIOD OF MILITARY CONFLICT.—The term ''period of military conflict'' has the meaning given the term in section 20104(a) of this title.

(3) RESERVIST EXPECTING ACTIVATION.—The term ''reservist expecting activation'' means a reservist who—

(A) has not been ordered to active duty;

(B) expects to be ordered to active duty during a period of military conflict; and

(C) is a key employee of a small business concern that can reasonably demonstrate that the small business concern will suffer economic injury in the absence of the reservist.

(4) SUBSTANTIAL ECONOMIC INJURY.—The term ''substantial economic injury'' means an economic harm to a small business concern that results in the inability of the small business concern to—

(A) meet its obligations as they mature;

(B) pay its ordinary and necessary operating expenses; or

(C) market, produce, or provide a product or service ordinarily marketed, produced, or provided by the small business concern.

(b) IN GENERAL.—Except as to agricultural enterprises, to the extent and in such amounts as are provided in advance in appropriation Acts, the Administrator may make a loan (directly or in cooperation with a bank or other lending institution through an agreement 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 the small business concern's being ordered to active military duty during a period of military conflict.

(c) ELIGIBILITY PERIOD.—

(1) IN GENERAL.—A small business concern shall be eligible for assistance under this section during the period beginning on the date on which an essential employee is ordered to active duty and ending on the date that is one year after the date on which the essential employee is discharged or released from active duty.

(2) EXTENSION.—The Administrator may, when appropriate (as determined by the Administrator), extend the ending date specified in paragraph (1) by not more than one year.

(d) INTEREST RATE.—A loan or guarantee made under this section shall be made at the same interest rate as in the case of an economic injury loan under section 21302 of this title.

(e) LOAN AMOUNT.—

(1) IN GENERAL.—Except as provided in paragraph (2), no loan may be made under this section if the total amount outstanding and committed to the borrower under the disaster loan program would exceed $1,500,000.

(2) MAJOR SOURCE OF EMPLOYMENT.—If the Administrator determines that the applicant constitutes a major source of employment in its surrounding area (including a borrower that was not a major source of employment before the disaster but became a major source of employment after the disaster), as determined by the Administrator, the Administrator may waive the $1,500,000 limitation under paragraph (1).

(f) PRECONSIDERATION PROCESS.—The Administrator shall establish a preconsideration process under which the Administrator—

(1) may collect all relevant materials necessary for processing a loan to a small business concern under this section before a reservist expecting activation who is employed by the small business concern is activated; and

(2) shall distribute funds for any loan approved under paragraph (1) if the reservist expecting activation is activated.

(g) OUTREACH AND TECHNICAL ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary of Veterans Affairs and the Secretary of Defense, may develop a comprehensive outreach and technical assistance program (referred to in this subsection as the "program") to—

(A) market the loans available under this section to reservists and family members of reservists (including both reservists that are on active duty and reservists that are not on active duty); and

(B) provide technical assistance to a small business concern applying for a loan under this section.

(2) COMPONENTS.—The program shall—

(A) incorporate appropriate websites maintained by the Administration, the Department of Veterans Affairs, and the Department of Defense; and

(B) require that information on the program be made available to small business concerns directly through—

(i) the district offices and resource partners of the Administration, including small business development centers, women's business centers, and the SCORE; and

(ii) the Department of Veterans Affairs, the Department of Defense, and other Federal agencies.

(3) REPORT.—

(A) IN GENERAL.—The Administrator shall submit to Congress a biannnual report on the status of the program.

(B) CONTENTS.—A report under subparagraph (A) shall include—

(i) for the 6-month period ending on the date of the report—

(I) the number of loans approved under this section;

(II) the number of loans disbursed under this section; and

(III) the total amount disbursed under this section; and

(ii) recommendations, if any, to make the program more effective in serving small business concerns that employ reservists.

(C) REPEAL.—This paagraph is repealed effective February 14, 2011.

(h) NONCOLLATERALIZED LOANS.—

(1) IN GENERAL.—Notwithstanding any other provision of law, the Administrator may make a loan under this section of not more than $50,000 without collateral.

(2) DEFERRAL OF PAYMENT.—The Administrator may defer payment of principal and interest on a loan described in paragraph (1) during the longer of—

(A) the one-year period beginning on the date of the initial disbursement of the loan; or

(B) the period during which the essential employee is on active duty.

(i) PRIORITY.—The Administrator shall—

(1) give priority to any application for a loan under this section; and

(2) process and make a determination regarding applications under this section prior to processing or making a determination on other loan applications under the disaster loan program, on a rolling basis.

§ 21304. Public awareness of disaster declaration and application periods

(a) COORDINATION WITH FEMA.—

(1) IN GENERAL.—Notwithstanding any other provision of law, for any disaster declared under this chapter or major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 21308 of this title), 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 subtitle 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.

(2) 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 section 21308 of this title), 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—

(A) the deadline for submitting applications for assistance under this subtitle relating to the major disaster;

(B) information regarding the number of loan applications and disbursements processed by the Administrator relating to the major disaster for each day during the period beginning on the date on which the major disaster was declared and ending on the date of the report; and

(C) an estimate of the number of potential applicants that have not submitted an application relating to the major disaster.

(b) PUBLIC AWARENESS OF DISASTERS.—If a disaster is declared under this chapter or the Administrator declares eligibility for additional disaster assistance under section 21308 of this title, 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—

(1) the date of the declaration;

(2) the names of cities and towns within the disaster area;

(3) loan application deadlines related to the disaster;

(4) all relevant contact information for victim services available through the Administrator (including links to small business development center websites);

(5) links to relevant Federal and State disaster assistance websites, including links to websites providing information regarding assistance available from the Federal Emergency Management Agency;

(6) information on eligibility criteria for the disaster assistance programs, including where loan applications can be found; and

(7) loan application materials that clearly state the function of the Administration as the Federal source of disaster loans for homeowners and renters.

(c) MARKETING AND OUTREACH.—The Administrator shall create a marketing and outreach plan that—

(1) encourages a proactive approach to the disaster relief efforts of the Administrator;

(2) makes clear the services provided by the Administrator, including contact information, application information, and timelines for submitting applications, the review of applications, and the disbursement of funds;

(3) describes each of the disaster assistance programs, including how each disaster assistance program is made available and the eligibility requirements for each disaster assistance program;

(4) provides for regional marketing, focusing on disasters occurring in each Administration region before June 18, 2008, and likely scenarios for disasters in each Administration region; and

(5) ensures that the marketing plan is made available at small business development centers and on the website of the Administration.

§ 21305. Disaster loan processing

(a) MAJOR DISASTER LOAN PROCESSING AND LOSS VERIFICATION BY QUALIFIED PRIVATE CONTRACTORS.—

(1) MAJOR 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 chapter in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 21308 of this title), under which the Administrator shall pay the contractor a fee for each loan processed.

(2) LOAN LOSS VERIFICATION.—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 chapter in the event of a major disaster (including any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 21308 of this title), under which the Administrator shall pay the lender or verification professional

a fee for each loan for which the lender or verification professional verifies a loss.

(b) COORDINATION OF EFFORTS BETWEEN THE ADMINISTRATOR AND THE COMMISSIONER OF INTERNAL REVENUE TO EXPEDITE LOAN PROCESSING.—The Administrator and the Commissioner of Internal Revenue shall, to the maximum extent practicable, ensure that all relevant and allowable tax records for loan approval are shared with loan processors in an expedited manner on request by the Administrator.

(c) INFORMATION TRACKING AND FOLLOWUP SYSTEM.—

(1) INFORMATION TRACKING.—

(A) IN GENERAL.—The Administrator shall develop, implement, and maintain a centralized information system to track communications between Administration personnel and applicants for disaster assistance.

(B) INFORMATION TO BE RECORDED.—The information system shall ensure that when an applicant for disaster assistance communicates with Administration personnel on a matter relating to the application, the following information is recorded:

(i) The method of communication.

(ii) The date of the communication.

(iii) The identity of the Administration personnel.

(iv) A summary of the subject matter of the communication.

(2) FOLLOWUP.—The Administrator shall ensure that an applicant for disaster assistance receives, by telephone, mail, or electronic mail, followup communications from Administration personnel at all critical stages of the application process, including the following:

(A) When Administration personnel determine that additional information or documentation is required to process the application.

(B) When Administration personnel determine whether to approve or deny the disaster assistance.

(C) When the primary contact person managing the application for disaster assistance has changed.

(d) DISASTER ASSISTANCE PROCESSING REDUNDANCY.—The Administrator shall ensure that the Administration has in place a facility for disaster assistance processing that, when the Administration's primary facility for disaster loan processing becomes unavailable, is able to take over all disaster loan processing from the primary facility within 2 days.

§ 21306. Disaster assistance employees

(a) IN GENERAL.—In carrying out the disaster assistance programs, the Administrator may, where practicable, ensure that the number of full-time equivalent employees—

(1) in the Office of the Disaster Assistance is not fewer than 800; and

(2) in the Disaster Cadre of the Administration is not fewer than 1,000.

(b) REPORT.—In carrying out the disaster assistance programs, if the number of full-time employees for the Office of Disaster Assistance or the Disaster Cadre of the Administration is below the level required by subsection (a) for that office, not later than 21 days after the date on which the staffing level decreases below the level required by subsection (a), the Administrator shall submit to the Committee on Appropriations and 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 that—

(1) details staffing levels on that date;

(2) requests, if practicable and determined to be appropriate by the Administrator, additional funds for additional employees; and

(3) contains such additional information as the Administrator determines to be appropriate.

§ 21307. Maximum loan amount

(a) AGGREGATE LOAN AMOUNTS.—Except as provided in subsection (b), and notwithstanding any other provision of law, the aggregate loan amount outstanding and committed to a borrower under the disaster loan program shall not exceed $2,000,000.

(b) WAIVER.—The Administrator may increase the aggregate loan amount under subsection (a) for loans relating to a disaster to a level established by the Administrator based on appropriate economic indicators for the region in which the disaster occurred.

§ 21308. Declaration of eligibility for additional disaster assistance

(a) DEFINITIONS.—In this section:

(1) ELIGIBLE SMALL BUSINESS CONCERN.—The term ''eligible small business concern'' means a small business concern—

(A) that has suffered major disaster-related substantial economic injury as a result of a major disaster; and

(B)(i) for which not less than 25 percent of the market share of the small business concern is from business transacted in the major disaster area;

(ii) for which not less than 25 percent of an input into a production process of the small business concern is from the major disaster area; or

(iii) that relies on a provider located in the major disaster area for a service that is not readily available elsewhere.

(2) MAJOR DISASTER-RELATED SUBSTANTIAL ECONOMIC INJURY.—The term ''major disaster-related substantial economic injury'' means economic harm to a business concern that results in the inability of the business concern to—

(A) meet its obligations as they mature;

(B) meet its ordinary and necessary operating expenses; or

(C) 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 major disaster area or sells or markets in the major disaster area.

(b) DECLARATION OF ELIGIBILITY.—If the President declares a major disaster, the Administrator may declare eligibility for additional disaster assistance in accordance with this section.

(c) THRESHOLD.—A major disaster for which the Administrator declares eligibility for additional disaster assistance under this section shall be a major disaster that—

(1) results in—

(A) extraordinary levels of casualties or damage; or

(B) disruption severely affecting the population (including a mass evacuation), the infrastructure, the environment, the economy, national morale, or government functions in an area;

(2) is comparable to a catastrophic incident described in the Administrator's national response plan (including any successor to the national response plan), unless the national response plan expires and there is no successor to the plan, in which case this paragraph shall be of no effect; and

(3) is of such size and scope that—

(A) the disaster loan program is incapable of providing adequate and timely assistance to individuals or business concerns located within the major disaster area; or

(B) a significant number of business concerns outside the major disaster area have suffered major disaster-related substantial economic injury as a result of the major disaster.

(d) ADDITIONAL ECONOMIC INJURY DISASTER LOAN ASSISTANCE.—

(1) IN GENERAL.—If the Administrator declares eligibility for additional disaster assistance under this section, the Administrator may

make such loans under this subsection as the Administrator determines to be appropriate to eligible small business concerns located anywhere in the United States.

(2) PROCESSING TIME.—

(A) IN GENERAL.—If the Administrator determines that the average processing time for applications for disaster loans under this subsection 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 major disaster area until the Administrator determines that the average processing time for such applications is not more than 15 days.

(B) SUSPENSION OF APPLICATIONS FROM OUTSIDE MAJOR DISASTER AREA.—If the Administrator determines that the average processing time for applications for disaster loans under this subsection 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 major disaster area until the Administrator determines that the average processing time for such applications is not more than 15 days.

(3) LOAN TERMS.—A loan under this subsection shall be made on the same terms as a loan under section 21302 of this title.

§ 21309. Interest rates

(a) IN GENERAL.—Notwithstanding any other provision of law, except as provided in subsection (b), the interest rate on the Administrator's share of a loan under the disaster loan program shall not exceed—

(1) 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 0.125 percent; plus

(2) 0.25 percent.

(b) LOANS UNDER SECTION 21301 OR 21302.—

(1) IN GENERAL.—The interest rate for a loan under section 21301 or 21302 of this title shall not exceed the rate of interest that is in effect at the time of the occurrence of the disaster.

(2) DETERMINATION.—Notwithstanding any other provision of law, the interest rate on the Federal share of a loan under section 21301 or 21302 of this title, determined as of the date of the disaster, shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the lesser of—

(i) a rate prescribed by the Administrator, not to exceed half a 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 one percent per year as determined by the Administrator, and adjusted to the nearest 0.125 percent; or

(ii) 4 percent per year;

(B) in the case of a homeowner able to secure credit elsewhere, the lesser of—

(i) a rate prescribed by the Administrator, not to exceed a 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 one percent per year as determined by the Administrator, and adjusted to the nearest 0.125 percent; or

(ii) 8 percent per year;

(C) in the case of a business concern, private nonprofit organization, or other concern (including an agricultural cooperative) unable to obtain credit elsewhere, not to exceed 4 percent per year; or

(D) in the case of a business concern able to obtain credit elsewhere, a rate prescribed by the Administrator, not to exceed the lowest of—

(i) the rate prevailing in the private market for similar loans;

(ii) the rate prescribed by the Administrator as the maximum interest rate for deferred participation (guaranteed) loans under the general business loan program; or

(iii) 8 percent per year.

§ 21310. Maximum term

No loan under the disaster loan program (including any renewal or extension of a loan) may be made for a period or periods exceeding—

(1) 30 years; or

(2) in the case of a loan to a business concern under section 21309(b)(2)(D) of this title that is able to obtain credit elsewhere, 3 years.

§ 21311. Deferment of repayment

(a) IN GENERAL.—In making a loan under this chapter, the Administrator may provide the person receiving the loan an option to defer repayment on the loan.

(b) DEFERMENT PERIOD.—The period of a deferment under subsection (a) shall not exceed 4 years.

§ 21312. Suspension of payments

(a) IN GENERAL.—The Administrator may consent to a suspension in the payment of principal and interest on, and to an extension in the maturity of, the Federal share of a loan under the disaster loan program, for a period not to exceed 5 years, if—

(1) the borrower under the loan is a homeowner or a small business concern;

(2) the loan was made to enable—

(A) the homeowner to repair or replace his or her home; or

(B) the small business concern to repair or replace plant or equipment that was damaged or destroyed as the result of a disaster described in clause (i) or (ii) of section 21302(b)(2)(A) of this title; and

(3) the Administrator determines that the suspension is necessary to avoid severe financial hardship.

(b) PURCHASE OF PARTICIPATION OR ASSUMPTION OF OBLIGATION.—During any period in which principal and interest charges are suspended under subsection (a), the Administrator shall, on the request of any person having a participation in the loan, purchase the participation, or assume the obligation of the borrower, for the balance of the period, to make principal and interest payments on the non-Federal share of the loan, if—

(1) the Administrator determines that the action is necessary to avoid a default; and

(2) the borrower agrees to make payments to the Administrator in an aggregate amount equal to the amount paid in the borrower's behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator determines having due regard for the purposes sought to be achieved by this subsection.

§ 21313. Participation in loans on deferred basis

In an agreement to participate in a loan on a deferred basis under the disaster loan program, participation by the Administrator shall not be in ex-

cess of 90 percent of the balance of the loan outstanding at the time of disbursement.

§ 21314. Assistance and counseling for disaster victims

In administering the disaster assistance programs, to the maximum extent possible, the Administrator shall provide assistance and counseling to disaster victims in—

(1) filing applications (including the provision of information relevant to loan processing); and

(2) loan closing and prompt disbursement of loan proceeds.

§ 21315. Priority in allocating funds

In administering the disaster assistance programs, to the maximum extent possible, the Administrator shall give the disaster loan program a high priority in allocating funds for administrative expenses.

§ 21316. Prohibition of cancellation of certain disaster loans

No portion of a loan under section 21301 or 21302 of this title shall be subject to cancellation under any provision of law.

§ 21317. Prohibition of net earnings clauses

In making a loan under this chapter, the Administrator shall not require the borrower to pay any nonamortized amount for the first 5 years after repayment begins.

§ 21318. Biennial disaster simulation exercise

(a) IN GENERAL.—The Administrator shall conduct a disaster simulation exercise at least once every 2 fiscal years.

(b) REQUIREMENTS.—A disaster simulation exercise shall—

(1) include the participation of, at a minimum, not fewer than 50 percent of the individuals in the disaster reserve corps; and

(2) test, at maximum capacity, all of the information technology and telecommunications systems of the Administrator that are vital to the activities of the Administrator during a disaster.

(c) REPORT.—The Administrator shall include in a report under section 10717(g) of this title a report on a disaster simulation exercise conducted under subsection (a).

§ 21319. Disaster planning responsibilities

(a) DEFINITIONS.—In this section:

(1) DISASTER PLANNING OFFICER.—The term''disaster planning officer'' means the individual to whom the disaster planning function of the Administrator is assigned under subsection (b).

(2) STATE.—The term ''State'' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

(b) ASSIGNMENT OF SMALL BUSINESS ADMINISTRATION DISASTER PLANNING RESPONSIBILITIES.—The disaster planning function of the Administrator shall be assigned to an individual appointed by the Administrator who—

(1) is not an employee of the Office of Disaster Assistance of the Administration;

(2) has proven management ability;

(3) has substantial knowledge in the field of disaster readiness and emergency response; and

(4) has demonstrated significant experience in the area of disaster planning.

(c) RESPONSIBILITIES.—The disaster planning officer shall report directly and solely to the Administrator and shall be responsible for—

(1) developing, implementing, and maintaining the comprehensive disaster response plan under section 21320 of this title;

(2) ensuring that there are in-service and pre-service training procedures for the disaster response staff of the Administration;

(3) coordinating and directing the training exercises of the Administration relating to disasters, including disaster simulation exercises and disaster exercises coordinated with other government agencies; and

(4) other responsibilities relevant to disaster planning and readiness, as determined by the Administrator.

(d) COORDINATION.—In carrying out the responsibilities described in subsection (c), the disaster planning officer shall coordinate with—

(1) the Office of Disaster Assistance of the Administration;

(2) the Administrator of the Federal Emergency Management Agency; and

(3) other Federal, State, and local disaster planning offices, as necessary.

(e) RESOURCES.—The Administrator shall ensure that the disaster planning officer has adequate resources to carry out the responsibilities described in subsection (c).

§ 21320. Disaster response plan

(a) DEFINITION OF STATE.—In this section, the term ''State'' means a State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and any territory or possession of the United States.

(b) PLAN.—

(1) IN GENERAL.—The Administrator shall develop, implement, and maintain a comprehensive written disaster response plan.

(2) CONTENTS.—The disaster response plan shall include the following:

(A) For each Administration region, a description of the disasters most likely to occur in the Administration region.

(B) For each disaster described under subparagraph (A)—

(i) an assessment of the disaster;

(ii) an assessment of the demand for Administration assistance most likely to occur in response to the disaster;

(iii) an assessment of the needs of the Administration, with respect to such resources as information technology, telecommunications, human resources, and office space, to meet the demand referred to in clause (ii); and

(iv) guidelines pursuant to which the Administrator will coordinate with other Federal agencies and with State and local authorities to best respond to the demand described in clause (ii) and to best use the resources referred to in that clause.

(c) PLAN REVISION.—The Administrator shall update the disaster response plan—

(1) annually; and

(2) following any major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 21308 of this title.

(d) REQUIRED KNOWLEDGE.—The Administrator shall carry out subsections (b) and (c) through an individual with substantial knowledge in the field of disaster readiness and emergency response.

(e) REPORT.—The Administrator shall include in a report under section 10717(g) of this title a report on the disaster response plan.

§ 21321. Coordination of disaster assistance programs with FEMA

(a) IN GENERAL.—The Administrator shall ensure that the disaster assistance programs of the Administration are coordinated, to the maximum extent practicable, with the disaster assistance programs of the Federal Emergency Management Agency.

(b) REGULATIONS.—

(1) IN GENERAL.—The Administrator, in consultation with the Administrator of the Federal Emergency Management Agency, shall establish regulations to ensure that each application for disaster assistance is submitted as quickly as practicable to the Administration or directed to the appropriate agency under the circumstances.

(2) REVISION.—The regulations shall be revised annually.

(c) REPORT.—The Administrator shall include in a report under section 10717(g) of this title a report on the regulations under subsection (b).

§ 21322. Plans to secure sufficient office space

(a) IN GENERAL.—The Administrator shall develop long-term plans to secure sufficient office space to accommodate an expanded workforce in times of disaster.

(b) REPORT.—The Administrator shall include in a report under section 10717(g) of this title a report on the plans developed under subsection (a).

§ 21323. Bond guarantees in procurements relating to a major disaster

(a) IN GENERAL.—Except as provided in subsection (b), and notwithstanding any other provision of law, for any procurement relating to a major disaster, the Administrator may, on such terms and conditions as the Administrator may prescribe, guarantee and enter into commitments to guarantee a surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond, or bonds ancillary thereto, by a principal on any total work order or contract amount at the time of bond execution that does not exceed $5,000,000.

(b) INCREASE IN AMOUNT.—On request of the head of any Federal agency (other than the Administration) involved in reconstruction efforts in response to a major disaster, the Administrator may guarantee and enter into a commitment to guarantee a surety against loss under subsection (a) on any total work order or contract amount at the time of bond execution that does not exceed $10,000,000.

(c) LIMITATION ON USE OF OTHER FUNDS.—The Administrator may carry out this section only with amounts appropriated in advance specifically to carry out this section.

§ 21324. Civil penalty

A person that wrongfully misapplies the proceeds of a loan made under the disaster loan program shall be liable to the Administrator for a civil penalty in the amount that is equal to 1.5 times the original principal amount of the loan.

CHAPTER 215—PRIVATE DISASTER ASSISTANCE PROGRAM

Sec.
21501. Definitions.
21502. Program.
21503. Use of loans.
21504. Online applications.
21505. Maximum amounts.
21506. Terms and conditions.
21507. Lenders.
21508. Fees.
21509. Documentation.

21510. Purchase of loans.
21511. Regulations.
21512. Authorization of appropriations.

§ 21501. Definitions

In this chapter:

(1) ELIGIBLE INDIVIDUAL.—The term ''eligible individual'' means an individual who is eligible for disaster assistance under section 21301 of this title relating to a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 21308 of this title.

(2) MAJOR DISASTER AREA.—The term ''major disaster area'' means an area for which the President declares a major disaster relating to which the Administrator declares eligibility for additional disaster assistance under section 21308 of this title, during the period of the major disaster declaration.

(3) QUALIFIED PRIVATE LENDER.—The term ''qualified private lender'' means a privately-owned bank or other lending institution that—

(A) is not a preferred lender; and

(B) the Administrator determines meets the criteria established under section 20511 of this title.

(4) SMALL BUSINESS CONCERN.—The term ''small business concern'' means a small business concern (as defined in section 10101 or 30101 of this title).

§ 21502. Program

The Administrator shall carry out a program, to be known as the private disaster assistance program, under which the Administrator may guarantee timely payment of principal and interest, as scheduled, on any loan made to a small business concern located in a major disaster area or to an eligible individual.

§ 21503. Use of loans

A loan guaranteed by the Administrator under this chapter may be used for any purpose authorized under chapter 213.

§ 21504. Online applications

(a) ESTABLISHMENT OF PROCESS.—The Administrator may establish, directly or through an agreement with another entity, an online application process for loans guaranteed under this chapter.

(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 section may be considered for any other Federal assistance program for disaster relief.

(c) CONSULTATION.—In establishing an online application process under this section, the Administrator shall consult with appropriate persons from the public and private sectors, including private lenders.

§ 21505. Maximum amounts

(a) GUARANTEE PERCENTAGE.—The Administrator may guarantee not more than 85 percent of a loan under this chapter.

(b) LOAN AMOUNT.—The maximum amount of a loan guaranteed under this chapter shall be $2,000,000.

§ 21506. Terms and conditions

A loan guaranteed under this chapter shall be made under the same terms and conditions as a loan under chapter 213.

§ 21507. Lenders

(a) IN GENERAL.—

(1) LOANS TO AN ELIGIBLE INDIVIDUAL.—A loan guaranteed under this chapter made to an eligible individual may be made by a preferred lender.

(2) LOANS TO A SMALL BUSINESS CONCERN.—A loan guaranteed under this chapter made to a small business concern may be made by a qualified private lender or by a preferred lender that also makes loans to eligible individuals.

(b) COMPLIANCE.—If the Administrator determines that a preferred lender knowingly failed to comply with the underwriting standards for loans guaranteed under this chapter or violated the terms of the standard operating procedure agreement between the preferred lender and the Administrator, the Administrator shall do one or both of the following:

(1) Exclude the preferred lender from participating in the private disaster assistance program.

(2) Exclude the preferred lender from participating in the preferred lender program for a period of not more than 5 years.

§ 21508. Fees

(a) IN GENERAL.—The Administrator shall not collect a guarantee fee under this chapter.

(b) ORIGINATION FEE.—The Administrator may pay a qualified private lender or preferred lender an origination fee for a loan guaranteed under this chapter in an amount agreed on in advance between the qualified private lender or preferred lender and the Administrator.

§ 21509. Documentation

(a) IN GENERAL.—A qualified private lender or preferred lender may use its own loan documentation for a loan guaranteed by the Administrator under this chapter, to the extent authorized by the Administrator.

(b) NOT PART OF QUALIFICATION CRITERIA.—The ability of a lender to use its own loan documentation for a loan guaranteed under this chapter shall not be considered part of the criteria for becoming a qualified private lender under the regulations promulgated under section 21511 of this title.

§ 21510. 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 chapter.

§ 21511. Regulations

The Administrator shall promulgate regulations establishing permanent criteria for qualified private lenders.

§ 21512. Authorization of appropriations

(a) IN GENERAL.—Amounts necessary to carry out this chapter shall be made available from amounts appropriated to the Administration to carry out chapter 213.

(b) AUTHORITY TO REDUCE INTEREST RATES AND OTHER TERMS AND CONDITIONS.—Funds appropriated to the Administration to carry out this chapter may be used by the Administrator to meet the loan terms and conditions specified in section 21506 of this title.

CHAPTER 217—IMMEDIATE DISASTER ASSISTANCE PROGRAM

Sec.
21701. Definition of program.
21702. Program.
21703. Eligibility.
21704. Use of proceeds.
21705. Loan terms.
21706. Approval or disapproval.

§ 21701. Definition of program

In this chapter, the term ''program'' means the immediate disaster assistance program established under section 21702 of this title.

§ 21702. Program

The Administrator shall carry out a program, to be known as the immediate disaster assistance program, under which the Administrator participates on a deferred (guaranteed) basis in 85 percent of the balance of the financing outstanding at the time of disbursement of the loan if the balance is less than or equal to $25,000 for business concerns affected by a disaster.

§ 21703. Eligibility

To receive a loan guarantee under section 21702 of this title, an applicant shall apply for, and meet basic eligibility standards for, a loan under chapter 213 or 215.

§ 21704. Use of proceeds

A business concern that receives a loan under chapter 213 or 215 shall use the proceeds of the loan to repay all loans guaranteed under section 21702 of this title, if any, before using the proceeds for any other purpose.

§ 21705. Loan terms

(a) NO PREPAYMENT PENALTY.—There shall be no prepayment penalty on a loan guaranteed under section 21702 of this title.

(b) REPAYMENT.—A business concern that receives a loan guaranteed under section 21702 of this title and that is disapproved for a loan under chapter 213 or 215 shall repay the loan guaranteed under section 21702 of this title not later than the date established by the Administrator, which shall not be earlier than 10 years after the date on which the loan guaranteed under section 21702 of this title is disbursed.

§ 21706. Approval or disapproval

The Administrator shall ensure that each applicant for a loan under the program receives a decision approving or disapproving the application within 36 hours after the Administrator receives the application.

CHAPTER 219—EXPEDITED DISASTER ASSISTANCE BUSINESS LOAN GUARANTEE PROGRAM

Sec.
21901. Definition of program.
21902. Program.
21903. Consultation.
21904. Regulations.

§ 21901. Definition of program

In this chapter, the term ''program'' means the expedited disaster assistance business loan guarantee program established under section 21902 of this title.

§ 21902. Program

The Administrator shall establish and implement an expedited disaster assistance business loan guarantee program under which the Administrator may, on an expedited basis, guarantee timely payment of principal and interest, as scheduled on any loan made to an eligible small business concern under section 21308 of this title.

§ 21903. Consultation

In establishing the program, the Administrator shall consult with—

(1) appropriate personnel (including district office personnel) of the Administration;

(2) appropriate technical assistance providers (including small business development centers);

(3) appropriate lenders and credit unions; and

(4) the Committee on Small Business and Entrepreneurship of the Senate and Committee on Small Business of the House of Representatives.

§ 21904. Regulations

(a) IN GENERAL.—The Administrator shall issue regulations establishing and implementing the program in accordance with this chapter.

(b) CONTENTS.—The regulations shall—

(1) identify whether appropriate uses of funds under the program may include—

(A) paying employees;

(B) paying bills and other financial obligations;

(C) making repairs;

(D) purchasing inventory;

(E) restarting or operating a small business concern in the community in which the small business concern was conducting operations prior to the applicable major disaster or in a neighboring area in the disaster area; or

(F) covering additional costs until the small business concern is able to obtain funding through insurance claims, Federal assistance programs, or other sources; and

(2) set the terms and conditions of any loan made under the program.

(c) TERMS AND CONDITIONS.—A loan guaranteed by the Administrator under the program—

(1) shall be for not more than $150,000;

(2) shall be a short-term loan, not to exceed 180 days, except that the Administrator may extend the term as the Administrator determines to be appropriate on a case-by-case basis;

(3) shall have an interest rate not to exceed 300 basis points above the interest rate established by the Board of Governors of the Federal Reserve System that one bank charges another for reserves that are lent on an overnight basis on the date on which the loan is made;

(4) shall have no prepayment penalty;

(5) may be made only to a borrower that meets the requirements for a loan under chapter 213;

(6) may be refinanced as part of any subsequent disaster assistance provided under chapter 213;

(7) may receive expedited loss verification and loan processing, if the applicant—

(A) is a major source of employment in the disaster area (which shall be determined in the same manner as under section 21303(e)(2) of this title); or

(B) is vital to recovery efforts in the region (including providing debris removal services, manufactured housing, or building materials); and

(8) shall be subject to such additional terms as the Administrator determines to be appropriate.

DIVISION E—BUSINESS DEVELOPMENT PROGRAM

CHAPTER 231—GENERAL PROVISIONS

Sec.
23101. Definitions.
23102. Establishment of business development program.
23103. Unemployed or low-income individuals.
23104. Restrictions on activities of Administration employees.
23105. Encouragement of subcontracts.
23106. Federal contracts, subcontracts, and deposits.
23107. Business opportunity specialists.
23108. Requests for investigation.

§ 23101. Definitions

In this division:

(1) ASSOCIATE ADMINISTRATOR.—The term ''Associate Administrator'' means the Associate Administrator for Minority Small Business and Capital Ownership Development.

(2) BUSINESS ACTIVITY TARGET.—The term ''business activity target'' means a target contained in a business plan for contracts awarded other than through the program.

(3) BUSINESS OPPORTUNITY SPECIALIST.—The term ''business opportunity specialist'' means an Administration employee responsible for providing business development assistance to a program participant.

(4) BUSINESS PLAN.—The term ''business plan'' means the business plan of a program participant under section 23318 of this title.

(5) DIRECTOR.—The term ''Director'' means the Director of the Division.

(6) DISADVANTAGED OWNER.—The term ''disadvantaged owner'' means an individual on whom eligibility is based for participation in the business development program.

(7) DIVISION.—The term ''Division'' means the Division of Program Certification and Eligibility established by section 10308 of this title.

(8) ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—The term ''economically disadvantaged Indian tribe'' means an Indian tribe that the Administrator determines to be economically disadvantaged based on consideration of available information such as—

(A) the per capita income of members of the Indian tribe, excluding judgment awards;

(B) the percentage of the local Indian population below the poverty level; and

(C) the Indian tribe's access to capital markets.

(9) EXECUTIVE AGENCY.—The term ''executive agency'' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(10) GRADUATE.—The term ''graduate'', with reference to a program participant, means to graduate the program participant from the program under section 23320 of this title.

(11) INDIAN TRIBE.—The term ''Indian tribe'' means an Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) that—

(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or

(B) is recognized as such by the State in which the Indian tribe, band, nation, group, or community resides.

(12) PROGRAM.—The term ''program'' means the business development program.

(13) PROGRAM PARTICIPANT.—The term ''program participant'' means a small business concern that is participating in the program.

(14) PROGRAM PARTICIPATION PERIOD.—The term ''program participation period'', with respect to a program participant, means the period of program participation applicable to the program participant under section 23329 of this title.

(15) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—

(A) IN GENERAL.—The term ''small business concern owned and controlled by socially and economically disadvantaged individuals'' means a small business concern—

(i) not less than 51 percent of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals;

(II) an economically disadvantaged Indian tribe (or a wholly owned business entity of an economically disadvantaged Indian tribe); or

(III) an economically disadvantaged Native Hawaiian organization; and

(ii) the management and daily business operations of which are controlled by one or more—

(I) socially and economically disadvantaged individuals;

(II) members of an economically disadvantaged Indian tribe; or

(III) Native Hawaiian organizations.

(B) SIZE DETERMINATION FOR INDIAN TRIBES.—In determining the size of a concern owned by an economically disadvantaged Indian tribe (or a wholly owned business entity of an economically disadvantaged Indian tribe) for purposes of subparagraph (A), the concern's size shall be independently determined without regard to its affiliation with the Indian tribe, any entity of the tribal government, or any other business enterprise owned by the Indian 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.

(16) SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUAL.—

(A) IN GENERAL.—The term ''socially and economically disadvantaged individual'' means a member of a group of socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared with others in the same business area who are not socially disadvantaged.

(B) DETERMINATION OF DEGREE OF DIMINISHED CREDIT AND CAPITAL OPPORTUNITIES.—In determining the degree of diminished credit and capital opportunities, the Administrator shall consider the assets and net worth of a socially disadvantaged individual.

(C) NET WORTH.—In computing personal net worth for purposes of this paragraph, there shall be excluded—

(i) the value of investments that disadvantaged owners have in their concern, except that the value of such investments shall be taken into account when comparing the concern to other concerns in the same business area that are owned by other than socially disadvantaged persons; and

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such eq-

uity that is attributable to unduly excessive withdrawals from a program participant or a concern applying for program participation shall be taken into account.

(17) SOCIALLY DISADVANTAGED INDIVIDUAL.—

(A) IN GENERAL.—The term ''socially disadvantaged individual'' means a member of a group of individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of the group without regard to their individual qualities.

(B) DETERMINATION.—

(i) IN GENERAL.—A determination under subparagraph (A) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Small Business and Capital Ownership Development.

(ii) NONDELEGABILITY.—The authority of the Administrator under clause (i) may not be delegated.

(18) TERMINATE.—The term ''terminate'', with reference to a program participant, means to suspend or totally deny assistance to a program participant under the program, prior to the graduation of the program participant or prior to the expiration of the program participant's program participation period, under section 23321 of this title.

§ 23102. Establishment of business development program

There is established within the Administration the business development program.

§ 23103. Unemployed or low-income individuals

The program shall be used to—

(1) assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in small business concerns, with special attention to, and particular emphasis on the preservation or establishment of, small business concerns that are—

(A) located in urban or rural areas with high proportions of unemployed or low-income individuals; or

(B) owned by low-income individuals; and

(2) mobilize for those objectives private as well as public managerial skills and resources.

§ 23104. Restrictions on activities of Administration employees

(a) ACTIVITIES AND TRANSACTIONS RELATING TO OWNERSHIP OF A PROGRAM PARTICIPANT.—

(1) IN GENERAL.—A person within the employ of the Administration shall not, during the term of such employment and for a period of 2 years after the employment has been terminated, engage in any activity or transaction described in paragraph (2) with respect to any program participant during the person's term of employment, if the person participated personally (directly or indirectly)—

(A) in decisionmaking responsibilities relating to the program participant; or

(B) with respect to the administration of any assistance provided to program participants generally under the program.

(2) ACTIVITIES AND TRANSACTIONS.—The activities and transactions referred to in paragraph (1) are—

(A) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock or any other ownership interest or the right to acquire any such interest;

(B) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in subparagraph (A); and

(C) the receipt of any other benefit or right that may be an incident of ownership.

(3) ANNUAL CERTIFICATION.—

(A) IN GENERAL.—An employee described in subparagraph (B) shall annually submit to the Administrator a written certification regarding compliance with this section.

(B) EMPLOYEE.—The employees referred to in subparagraph (A) are—

(i) a regional administrator;

(ii) a district director;

(iii) the Associate Administrator;

(iv) an employee whose principal duties relate to the award of contracts or the provision of other assistance under the program; and

(v) such other employees as the Administrator may designate.

(4) CIVIL PENALTIES.—

(A) IN GENERAL.—An employee or former employee of the Administration who violates this section shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 percent of the maximum amount of gain that the employee realized or could have realized as a result of engaging in the activity and transaction prohibited by paragraph (1).

(B) FALSE CERTIFICATION.—In addition to any other remedy or sanction provided for under law (including a regulation), a person who makes a false certification under paragraph (3)(A) shall be subject to a civil penalty under section 3802 of title 31.

(b) POLITICAL ACTIVITIES AND AFFILIATIONS.—

(1) PROHIBITION.—An employee of the Administration who has authority to take, direct others to take, recommend, or approve any action with respect to any program or activity under the program shall not, with respect to any such action, exercise or threaten to exercise that authority on the basis of the political activity or affiliation of any person.

(2) REPORTING OF SOLICITATION TO VIOLATE.—An employee of the Administration whose participation in a violation of paragraph (1) is directed or solicited shall expeditiously report the direction or solicitation to the Inspector General of the Administration.

(3) DISCIPLINARY ACTION.—An employee of the Administration who willfully and knowingly violates paragraph (1) or (2) shall be subject to disciplinary action, which may consist of separation from service, reduction in grade, suspension, or reprimand.

(4) APPLICABILITY.—Paragraphs (1) and (2) do not apply to an action taken as a penalty or other enforcement of a violation of any law (including a regulation) prohibiting or restricting political activity.

(5) OTHER PROHIBITIONS, MEASURES, AND LIABILITIES.—Paragraphs (1) to (4) are in addition to, and not in lieu of, any other prohibitions, measures, or liabilities that may arise under any other provision of law.

§ 23105. Encouragement of subcontracts

(a) IN GENERAL.—The Administrator shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals and with program participants.

(b) INCENTIVES AND ASSISTANCE.—The Administrator may provide incentives and assistance to a business to aid in the training and upgrading of potential program participant subcontractors.

§ 23106. Federal contracts, subcontracts, and deposits

The Administrator shall take such steps as are necessary and appropriate, in coordination and cooperation with the heads of other Federal agencies, to ensure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such a way as to further the purposes of the program.

§ 23107. Business opportunity specialists

(a) POSITION.—In each Administration field office responsible for assisting one or more program participants there shall be a position designated as a business opportunity specialist.

(b) ADEQUATE NUMBER.—To the maximum extent practicable, the Administrator shall ensure that an adequate number of business opportunity specialists are assigned to each district office to carry out the responsibilities of the program and to assist program participants.

(c) TRAINING.—The Administrator shall take such actions as are appropriate to ensure that any person employed as a business opportunity specialist receives adequate periodic training to ensure that the employee is capable of assisting program participants in fully utilizing the program and meeting the requirements of this subtitle and subtitle I.

§ 23108. Requests for investigation

The Committee on Small Business and Entrepreneurship of the Senate or the Committee on Small Business of the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any activity conducted under the program. Not later than 30 days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the disposition of the request.

CHAPTER 233—CONTRACTING

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§ 23301. Contracting authority

(a) IN GENERAL.—When the Administrator determines that such action is necessary or appropriate, the Administrator shall—

(1) enter into contracts with procuring agencies obligating the Administrator to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government; and

(2) arrange for the performance of such contracts by negotiating or otherwise letting a subcontract to one or more small business concerns owned and controlled by socially and economically disadvantaged individuals—

(A) for the manufacture, supply, assembly of the articles, equipment, supplies, materials, or parts thereof, for the construction work, for the services, or for servicing or processing in connection with the manufacturing, construction, or services; or

(B) for such management services as are necessary to enable the Administrator to perform the contract.

(b) CONSTRUCTION SUBCONTRACTS.—To the maximum extent practicable, construction subcontracts awarded by the Administrator under the program shall be awarded within the county or State in which the work is to be performed.

(c) INAPPLICABILITY TO CERTAIN PROCUREMENTS.—The requirements of the program do not apply to—

(1) a procurement under conditions described in—

(A) paragraph (2), (3), (4), (5), or (7) of section 303(c) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(c)); or

(B) paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10; or

(2) a procurement by an executive agency for which the head of the executive agency makes a determination in writing, after consultation with the Administrator and the Administrator for Federal Procurement Policy, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

§ 23302. Contracting procedure

(a) IN GENERAL.—If the Administrator certifies to a contracting officer of a procuring agency that the Administrator is competent and responsible

to perform a specific Government procurement contract to be let by the contracting officer, the contracting officer may let the contract to the Administrator on such terms and conditions as may be agreed on between the Administrator and the contracting officer.

(b) FAILURE TO AGREE.—

(1) IN GENERAL.—If the Administrator and the contracting officer fail to agree on a procurement contract—

(A) not later than 5 days after the date on which the Administrator is notified of the contracting officer's adverse decision, the Administrator may notify the contracting officer of the intent to appeal the adverse decision; and

(B) not later than 15 days after that date, the Administrator shall file a written request for a reconsideration of the adverse decision with the head of the procuring agency.

(2) ADVERSE DECISION.—For the purposes of paragraph (1)(A), a contracting officer's adverse decision includes—

(A) a decision not to make available for award under the program a particular procurement requirement; and

(B) a failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the program.

(3) SUSPENSION OF ACTION.—On receipt of a notice of intent to appeal under paragraph (1)(A), the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration is issued by the agency head, unless the contracting officer makes a written determination that urgent and compelling circumstances that significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision.

(4) DENIAL OF REQUEST FOR RECONSIDERATION.—If the Administrator's request for reconsideration is denied, the procuring agency head shall specify the reasons why the small business concern selected by the Administrator to perform the procurement requirement was determined to be incapable of performing the procurement requirement, and the findings supporting the determination, which shall be made a part of the contract file for the requirement.

§ 23303. Fair market price

(a) IN GENERAL.—A contract may not be awarded under the program if the award of the contract would result in a cost to the procuring agency that exceeds a fair market price.

(b) DETERMINATION.—

(1) IN GENERAL.—The fair market price under subsection (a) shall be determined by the procuring agency in accordance with this subsection.

(2) NEW PROCUREMENT.—

(A) IN GENERAL.—The estimate of a current fair market price for a new procurement requirement, or a requirement that does not have a satisfactory procurement history, shall be derived from a price or cost analysis.

(B) FACTORS.—A price or cost analysis—

(i) may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other Federal agency; and

(ii) shall consider such cost or pricing data as may be timely submitted by the Administrator.

(3) PROCUREMENTS WITH SATISFACTORY PROCUREMENT HISTORY.—

(A) IN GENERAL.—The estimate of a current fair market price for a procurement requirement that has a satisfactory procurement history shall be based on recent award prices adjusted to ensure comparability.

(B) ADJUSTMENT.—An adjustment under subparagraph (A) shall take into account differences in quantities, performance times, plans, specifications, transportation costs, packaging and packing costs, labor and materials costs, overhead costs, and any other additional costs that are considered appropriate.

(c) ESTIMATION METHOD.—

(1) IN GENERAL.—On the request of the Administrator, the procuring agency shall promptly submit to the Administrator a written statement detailing the method used by the procuring agency to estimate the current fair market price for the contract, identifying the information, studies, analyses, and other data used by the procuring agency.

(2) NONDISCLOSURE.—The procuring agency's estimate of the current fair market price and any supporting data furnished to the Administrator shall not be disclosed to any potential offeror other than the Administrator.

(d) PROTEST.—A small business concern selected by the Administrator to perform or negotiate a contract to be let under the program may request the Administrator to protest the procuring agency's estimate of the fair market price for the contract.

§ 23304. Award after completion of program participation period

The Administrator shall make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals that has completed its program participation period if—

(1) the contract will be awarded as a result of an offer (including price) submitted in response to a published solicitation relating to a competition conducted under section 23305 of this title; and

(2) the prospective contract awardee was a program participant eligible for award of the contract on the date specified for receipt of offers contained in the contract solicitation.

§ 23305. Award through competition

(a) IN GENERAL.—Except as provided in subsections (b) and (c), a contract opportunity offered for award under the program shall be awarded on the basis of competition restricted to eligible program participants if—

(1) there is a reasonable expectation that—

(A) at least 2 eligible program participants will submit offers; and

(B) an award can be made at a fair market price; and

(2) the anticipated award price of the contract (including options) will exceed—

(A) $5,000,000, in the case of a contract opportunity assigned a North American Industry Classification System code for manufacturing; or

(B) $3,000,000, in the case of any other contract opportunity.

(b) RESTRICTED COMPETITION FOR SMALLER CONTRACTS.—

(1) IN GENERAL.—The Associate Administrator may approve a request from a Federal agency to award a contract opportunity under the program on the basis of a competition restricted to eligible program participants even if the anticipated award price is not expected to exceed the dollar amounts specified in subsection (a)(2).

(2) APPROVALS.—Approvals under paragraph (1) shall be granted only on a limited basis.

(3) NONDELEGABILITY.—The authority of the Associate Administrator under paragraph (1) may not be delegated.

(c) PROGRAM PARTICIPANTS OWNED AND CONTROLLED BY AN ECONOMICALLY DISADVANTAGED INDIAN TRIBE.—Subsection (a) does not preclude the award of a sole source contract under section 23307 of this title, without regard to the anticipated award price of the contract, to a program participant that is owned and controlled by an economically disadvantaged Indian tribe.

(d) PROGRAM PARTICIPANTS OWNED AND CONTROLLED BY NATIVE HAWAIIAN ORGANIZATIONS.—For purposes of contracting with agencies of the Department of Defense, subsection (a) does not preclude the award of a sole source contract under section 23307 of this title, without regard to the anticipated award price of the contract, to a program participant that is owned and controlled by a Native Hawaiian organization.

§ 23306. Participation by program participants in negotiation of contracts to be awarded noncompetitively

A program participant selected by the Administrator to perform a contract to be let noncompetitively under the program shall, when practicable, participate in any negotiation of the terms and conditions of the contract.

§ 23307. Sole source award

(a) IN GENERAL.—The Administrator shall award a sole source contract under the program to a program participant recommended by the Federal agency offering the contract opportunity if—

(1) the program participant is determined to be a responsible contractor with respect to performance of the contract;

(2) the award of the contract would be consistent with the program participant's business plan; and

(3) the award of the contract would not result in the program participant's exceeding the requirements established by section 23328 of this title.

(b) EQUITABLE GEOGRAPHIC DISTRIBUTION.—To the maximum extent practicable, the Administrator shall promote the equitable geographic distribution of sole source contracts awarded under this section.

§ 23308. Annual certification regarding ownership and control

A program participant shall annually certify that the program participant meets the requirements of section 23101(15) of this title regarding ownership and control.

§ 23309. Annual submission regarding economic disadvantage

A program participant shall annually submit to the Administrator—

(1) a personal financial statement for each disadvantaged owner;

(2) a record of all payments made by the program participant to each of its disadvantaged owners or to any person or entity affiliated with its disadvantaged owners; and

(3) such other information as the Administrator considers necessary to make the determinations required by paragraphs (8) and (16) of section 23101 of this title and section 23310 of this title.

§ 23310. Review of economic disadvantage and withdrawal of assets

(a) ECONOMIC DISADVANTAGE.—If, on the basis of information provided by a program participant under section 23309 of this title or information otherwise obtained by the Administrator, the Administrator has reason to believe that the standards to establish economic disadvantage under section 23101(15) of this title are not met, the Administrator shall conduct a review to determine whether the program participant and its disadvantaged owners continue to be impaired in their ability to compete in the free enterprise system due to diminished capital and credit opportunities as compared with others in the same business area who are not socially disadvantaged.

(b) WITHDRAWAL OF ASSETS.—

(1) IN GENERAL.—If, on the basis of information provided by a program participant under section 23309 of this title or information otherwise obtained by the Administrator, the Administrator has reason to believe that the amount of funds or other assets withdrawn from a program participant for the personal benefit of its disadvantaged owners or any person or entity affiliated with its disadvantaged owners may have been unduly excessive, the Administrator shall conduct a review to determine whether the withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in the program participant's business plan.

(2) TERMINATION OR REQUIREMENT TO REINVEST ASSETS.—If the Administrator determines in a review under paragraph (1) that funds or other assets have been withdrawn to the detriment of the program participant's business, the Administrator shall—

(A) initiate a proceeding to terminate the program participant under section 23321 of this title; or

(B) require an appropriate reinvestment of funds or other assets and such other steps as the Administrator considers necessary to ensure the protection of the program participant.

§ 23311. Hearing on the record

(a) OPPORTUNITY FOR HEARING.—Before taking an action described in subsection (b) with respect to a small business concern, the Administrator shall provide the small business concern an opportunity for a hearing on the record in accordance with chapter 5 of title 5.

(b) ACTIONS.—The actions referred to in subsection (a) are—

(1) denial of admission to the program based on a determination that—

(A) a small business concern is not a small business concern owned and controlled by socially and economically disadvantaged individuals under section 23101(15) of this title;

(B) one or more of the owners of a small business concern is not a socially disadvantaged individual under section 23101(17) of this title; or

(C) one or more of the owners of a small business concern is not a socially and economically disadvantaged individual under section 23101(16);

(2) graduation under section 23320 of this title;

(3) termination under section 23321 of this title; and

(4) denial of a request to issue a waiver under section 23316(b) of this title.

(c) DECLINATION OF JURISDICTION.—The administrative law judge selected to preside over a proceeding under this section shall decline to accept jurisdiction over any matter that—

(1) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administrator's position;

(2) is untimely filed;

(3) is not filed in accordance with the rules of procedure governing the proceeding; or

(4) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(d) TIMING.—A proceeding under this section shall be completed and a decision rendered, insofar as practicable, not later than 90 days after a petition for a hearing is filed with the Office of Hearings and Appeals.

(e) FINAL DECISION.—A decision rendered under this section shall be the final decision of the Administrator and shall be binding on the Administrator and persons in the employ of the Administrator.

§ 23312. Program participant capability

(a) ELIGIBILITY FOR ASSISTANCE.—

(1) IN GENERAL.—A small business concern shall not be eligible for assistance under the program unless the Administrator determines that with contract, financial, technical, and management support, the small business concern—

(A) will be able to perform contracts that may be awarded to the small business concern under 23304 of this title; and

(B) has reasonable prospects for success in competing in the private sector.

(2) PERIOD OF OPERATION.—

(A) IN GENERAL.—The Administrator may prescribe a minimum period of time during which a prospective program participant must be in operation to meet the eligibility requirements of paragraph (1) only if the Administrator provides a waiver of the minimum period as provided in subparagraph (B).

(B) WAIVER.—The Administrator shall provide that any requirement that the Administrator establishes regarding the period of time during which a prospective program participant must have been in operation may be waived, and that a prospective program participant that otherwise meets the requirements of paragraph (1) shall be considered to have demonstrated reasonable prospects for success, if—

(i) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

(ii) the prospective program participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;

(iii) the prospective program participant has adequate capital to carry out its business plan;

(iv) the prospective program participant has a record of successful performance on contracts from governmental and nongovernmental sources in the primary industry category in which the prospective program participant is seeking certification; and

(v) the prospective program participant has, or can demonstrate its ability to timely obtain, the personnel, facilities, equipment, and any other requirements needed to perform such contracts.

(b) CAPABILITY.—

(1) CAPABILITY STATEMENTS.—

(A) ANNUAL SUBMISSION.—A program participant shall annually submit to the Administrator a capability statement.

(B) CONTENTS.—A capability statement shall—

(i) briefly describe the program participant's various contract performance capabilities; and

(ii) include the name and telephone number of the business opportunity specialist assigned the program participant.

(C) STATEMENT CATEGORIES.—The Administrator shall categorize capability statements as—

(i) statements indicating capability primarily dependent on local contract support; and

(ii) statements indicating capability primarily requiring a national marketing effort.

(D) DISSEMINATION OF CAPABILITY STATEMENTS.—

(i) LOCAL.—The Administrator shall disseminate capability statements described in subparagraph (C)(i) to appropriate contracting activities in the marketing area of each program participant, respectively.

(ii) NATIONAL.—The Administrator shall disseminate capability statements described in subparagraph (C)(ii) to the directors of the offices of small and disadvantaged business utilization for the appropriate Federal agencies, who shall further distribute the capability statements to contracting activities with Federal agencies that may purchase the types of items or services described in the capability statements.

(2) CONTACT BY CONTRACTING ACTIVITIES.—A contracting activity that receives a capability statement of a program participant under paragraph (1)(D) shall, within 60 days after receipt of the capability statement, contact the business opportunity specialist identified in the capability statement to indicate the number, type, and approximate dollar value of contract opportunities that the contracting activity may award over the succeeding 12-month period and that may be appropriate to consider for award to program participants for which the contracting activity has received capability statements.

(3) FORECAST OF CONTRACT OPPORTUNITIES.—

(A) IN GENERAL.—An executive agency that reports to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 in any fiscal year shall—

(i) prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that program participants are capable of performing; and

(ii) periodically revise the forecast during the following year.

(B) CONTENTS.—To the extent that the information is available, a forecast under subparagraph (A) shall specify—

(i) the approximate number of individual contract opportunities (and the number of opportunities within a class);

(ii) the approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities;

(iii) the anticipated time (by fiscal year quarter) for the issuance of a procurement request; and

(iv) the activity responsible for the award and administration of the contract.

(C) SUBMISSION OF FORECASTS.—Not later than 10 days after completion of a forecast under subparagraph (A), the head of the executive agency that prepared the forecast shall submit the forecast to—

(i) the director of the office of small and disadvantaged business utilization established under section 25109 of this title for the executive agency; and

(ii) the Administrator.

(D) SCOPE OF INFORMATION REPORTED.—A forecast submitted under subparagraph (C) may be limited to classes of items and services for which there are substantial annual purchases.

(E) AVAILABILITY OF FORECASTS.—A forecast submitted under subparagraph (C) shall be available to small business concerns.

§ 23313. Percentages of contract performance by program participants

(a) IN GENERAL.—A program participant may not be awarded a contract under the program unless the program participant agrees that—

(1) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the program participant; and

(2) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the program participant will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

(b) CHANGE IN PERCENTAGE.—

(1) IN GENERAL.—The Administrator may change the percentage under paragraph (1) or (2) of subsection (a) if the Administrator determines that a change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(2) LIMITATION.—A percentage established under paragraph (1) may not differ from a percentage established under section 25113 of this title.

(c) OTHER CATEGORIES OF CONTRACT.—

(1) IN GENERAL.—The Administrator shall by regulation establish requirements similar to those specified in subsection (a) to be applicable to—

(A) contracts for general and specialty construction; and

(B) contracts for any other industry category not otherwise subject to subsection (a).

(2) APPLICABLE PERCENTAGE.—The percentage applicable to a requirement under paragraph (1) shall be determined in accordance with subsection (b), except that such a percentage may not differ from a percentage established under section 25113 of this title for the same industry category.

§ 23314. Wholesalers and retailers

(a) IN GENERAL.—An otherwise responsible program participant that is described in subsection (b) shall not be denied the opportunity to submit and have considered its offer for a procurement contract for the supply of a product to be let under the program or section 25101 of this title solely because the program participant is other than the manufacturer or processor of the product to be supplied under the contract.

(b) REQUIREMENTS.—A program participant referred to in subsection (a) is a program participant that—

(1) is primarily engaged in wholesale or retail trade;

(2) is a small business concern under the numerical size standard for the North American Industry Classification System code assigned to the contract solicitation on which the offer is being made;

(3) is a regular dealer (as defined under section 11 of the Act of June 30, 1936 (41 U.S.C. 43b) (commonly known as the Walsh-Healey Act)) in the product to be offered the Government; and

(4) represents that the program participant will supply the product of a domestic small business manufacturer or processor, unless a waiver of this paragraph is granted—

(A) by the Administrator, after reviewing a determination by the contracting officer that no small business manufacturer or processor can reasonably be expected to offer a product meeting the specifications (including period for performance) required of an offeror by the solicitation; or

(B) by the Administrator for a product (or class of products), after determining that no small business manufacturer or processor is available to participate in the Federal procurement market.

§ 23315. Reporting by program participants to business opportunity specialists

(a) IN GENERAL.—A program participant shall semiannually submit to its assigned business opportunity specialist a report identifying each agent, representative, attorney, accountant, consultant, or other person (other than an employee of the program participant) that received compensation during the reporting period to assist the program participant in obtaining a Federal contract.

(b) CONTENTS.—A report under subsection (a) shall—

(1) disclose the amount of compensation received by each person identified in the report during the reporting period; and

(2) describe the activities performed for the compensation.

(c) REVIEW AND TRANSMITTAL.—The business opportunity specialist shall promptly—

(1) review the report; and

(2) transmit the report to the Associate Administrator.

(d) SUSPICION OF IMPROPER ACTIVITY.—The Associate Administrator shall transmit to the Inspector General of the Administration any report that raises a suspicion of improper activity.

(e) FAILURE TO SUBMIT REPORT.—A failure of a program participant to submit a report under subsection (a) shall constitute good cause for initiation of a termination proceeding under section 23321(b) of this title.

§ 23316. Transfer of ownership or control

(a) IN GENERAL.—

(1) PERFORMANCE BY CONTRACT AWARDEE.—A contract (including options) awarded under the program shall be performed by the program participant that is initially awarded the contract.

(2) RELINQUISHMENT OF OWNERSHIP OR CONTROL.—

(A) IN GENERAL.—Notwithstanding paragraph (1), if the owner or owners on whom eligibility for award of the contract was based relinquish ownership or control of the program participant, or enter into any agreement to relinquish such ownership or control, the contract or option shall be terminated for the convenience of the Government.

(B) NO DAMAGES.—No repurchase costs or other damages may be assessed against a program participant due solely to the operation of subparagraph (A).

(b) WAIVER.—

(1) IN GENERAL.—The Administrator may waive subsection (a) only if—

(A)(i) it is necessary for the owner of the program participant to surrender partial control of the program participant on a temporary basis to obtain equity financing; and

(ii) the Administrator is requested to waive subsection (a) prior to the actual transfer of ownership or control;

(B)(i) the procuring agency head certifies that termination of the contract would severely impair attainment of the procuring agency's program objectives or missions; and

(ii) the Administrator is requested to waive subsection (a) prior to the actual transfer of ownership or control;

(C)(i) ownership and control of the program participant will pass to another program participant; and

(ii) the acquiring program participant would otherwise be eligible to receive the award directly under the program;

(D)(i) due to incapacity or death, none of one or more individuals on whom eligibility was based is able to continue to exercise control of the program participant; and

(ii) the Administrator is requested to waive subsection (a) as soon as possible after the incapacity or death occurs; or

(E)(i) to raise equity capital, it is necessary for the disadvantaged owner of the program participant to transfer ownership of a majority of the voting stock of the program participant;

(ii) the program participant has exited the program;

(iii) the disadvantaged owner will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated persons); and

(iv) the disadvantaged owner will maintain control of daily business operations of the program participant.

(2) NONDELEGABILITY.—The authority of the Administrator under paragraph (1) may not be delegated.

(c) NOTIFICATION OF AGREEMENT TO TRANSFER.—The owner of a program participant that is performing a contract awarded under the program shall notify the Administrator immediately on entering into an oral or written agreement to transfer all or part of the stock or other ownership interest in the program participant to any other person.

(d) TREATMENT OF CERTAIN POTENTIAL OWNERSHIP INTERESTS.—Notwithstanding any other provision of law, for the purposes of determining ownership and control of a program participant, any potential ownership interest held by an investment company licensed under subtitle III shall be treated in the same manner as an interest held by the individuals on whom eligibility is based.

(e) CONTINUED ELIGIBILITY.—A program participant shall remain eligible for contracts under the program if there is a transfer of ownership and control to individuals whom the Administrator determines to be socially and economically disadvantaged. In the event of such a transfer, the transferee program participant, if not terminated or graduated, shall be eligible for a period of continued participation in the program for the remainder of the program participation period of the transferor.

§ 23317. Assistance for program participants

(a) IN GENERAL.—The Administrator shall—

(1) assist program participants in developing and maintaining comprehensive business plans that specify the program participant's specific business targets, objectives, and goals developed and maintained in conformity with section 23318 of this title;

(2) provide for such other nonfinancial services as the Administrator considers necessary for the establishment, preservation, and growth of program participants;

(3) assist program participants in obtaining equity and debt financing;

(4) establish regular performance monitoring and reporting systems for program participants to ensure compliance with their business plans;

(5) analyze and report the causes of success and failure of program participants; and

(6) provide assistance necessary to help program participants procure surety bonds.

(b) NONFINANCIAL SERVICES.—Nonfinancial services provided under subsection (a)(2) may include—

(1) loan packaging;

(2) financial counseling;

(3) accounting and bookkeeping assistance;

(4) marketing assistance; and

(5) management assistance.

(c) SURETY BONDS.—Assistance provided under subsection (a)(6) may include—

(1) assistance in the preparation of application forms required to receive a surety bond;

(2) special management and technical assistance designed to meet the specific needs of program participants that have received or are applying for a surety bond; and

(3) preparation of all forms necessary to receive a surety bond guarantee under chapter 321.

(d) OUTREACH PROGRAM.—

(1) IN GENERAL.—The Administrator shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under the program.

(2) ACTIVITIES.—The outreach program shall make a sustained and substantial effort to solicit applications for certification from—

(A) small business concerns located in areas of concentrated unemployment or underemployment or within labor surplus areas and within States having relatively few program participants; and

(B) small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts under the program.

§ 23318. Business plans

(a) SUBMISSION.—Promptly after certification under section 23325 of this title, a program participant shall submit a business plan for review by the business opportunity specialist assigned to assist the program participant.

(b) FORM; OBJECTIVE.—A business plan—

(1) may be a revision of a preliminary business plan submitted by the program participant or required by the Administrator as a part of the application for certification under the program; and

(2) shall be designed to result in the elimination by the program participant of the conditions or circumstances on which the Administrator determined eligibility under paragraph (8) or (16) of section 23101 of this title.

(c) APPROVAL OF BUSINESS PLAN AS CONDITION ON CONTRACT AWARD.—Prior approval of a business plan by the business opportunity specialist, and of subsequent modifications submitted under subsection (e), shall be a condition on the eligibility of a program participant for award of a contract under the program.

(d) CONTENTS.—A business plan shall include—

(1) 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;

(2) an analysis of the program participant's strengths and weaknesses, with particular attention to correcting any financial, managerial, technical, or personnel conditions that are likely to impede the program participant in receiving contracts other than contracts awarded under the program;

(3) specific targets, objectives, and goals for the business development of the program participant during the next and succeeding years using the results of the analyses conducted under paragraphs (1) and (2);

(4) a transition management plan outlining specific steps to ensure 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); and

(5) estimates of contract awards under the program and from other sources that the program participant will require to meet the specific targets, objectives, and goals for the years covered by the business plan, which estimates shall be consistent with section 23328 of this title and other applicable provisions of this chapter.

(e) ANNUAL REVIEW.—

(1) IN GENERAL.—A program participant shall annually review its currently approved business plan with its business opportunity specialist and modify the business plan as appropriate.

(2) APPROVAL.—

(A) SUBMISSION.—A modified business plan shall be submitted to the Administrator for approval.

(B) CONTINUED VALIDITY OF CURRENT PLAN.—The currently approved business plan shall be valid until such time as a modified business plan is approved by the business opportunity specialist.

(3) TRANSITIONAL STAGE.—Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that the program participant has complied with the requirements of section 23328 of this title relating to attaining business activity from sources other than contracts awarded under the program.

(f) ANNUAL NEEDS FORECAST.—

(1) IN GENERAL.—During the review of its plan conducted under subsection (e), a program participant shall annually forecast its needs for contract awards under the program for the next program year and the succeeding program year.

(2) INCLUSION IN BUSINESS PLAN.—An annual needs forecast shall be included in a program participant's business plan.

(3) CONTENTS.—An annual needs forecast shall include—

(A) the aggregate dollar value of contract support to be sought on a noncompetitive basis under the program, reflecting compliance with the requirements of section 23328 of this title relating

to attaining business activity from sources other than contracts awarded under the program;

(B) the types of contract opportunities being sought, identified by North American Industry Classification System code or otherwise;

(C) an estimate of the dollar value of contract support to be sought on a competitive basis; and

(D) such other information the business opportunity specialist may request to provide effective business development assistance to the program participant.

(g) LOGICAL BUSINESS PROGRESSION.—Limitations established by the Administrator restricting the award of contracts under the program to a limited number of North American Industry Classification System codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a program participant into areas of industrial endeavor in which the program participant has potential for success.

§ 23319. Denial of further assistance

(a) IN GENERAL.—A program participant shall be denied any assistance under the program if the program participant—

(1) voluntarily elects not to continue participation;

(2) completes its program participation period;

(3) is graduated; or

(4) is terminated.

(b) NO SUBSEQUENT RECERTIFICATION.—If participation in the program by a program participant is concluded for any of the reasons described in subsection (a), the former program participant shall not subsequently be recertified for participation in the program.

§ 23320. Graduation

A program participant shall be graduated from the program—

(1) when a program participant successfully completes the program by substantially achieving the targets, objectives, and goals contained in the program participant's business plan, thereby demonstrating the ability of the program participant to compete in the marketplace without assistance under the program; or

(2) if, in a review of economic disadvantage under section 23310(a) of this title, the Administrator determines that the program participant and its disadvantaged owners are no longer economically disadvantaged.

§ 23321. Termination

(a) BASIS FOR TERMINATION.—

(1) IN GENERAL.—Termination from the program shall be based on good cause.

(2) GOOD CAUSE.—For purposes of paragraph (1), good cause includes—

(A) the failure of a program participant to maintain eligibility for program participation;

(B) the failure of a program participant 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 program;

(C) a demonstrated pattern of failing to make required submissions or responses to the Administrator in a timely manner;

(D) the willful violation of any regulation of the Administrator pertaining to a material issue;

(E) the debarment of a program participant or its disadvantaged owners by any agency under subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); and

(F) the conviction of the disadvantaged owner or an officer of a program participant for an offense indicating a lack of business integrity (including a conviction for embezzlement, theft, forgery, bribery, falsification, or violation of chapter 105).

(3) TERMINATION FOR CONVICTION.—For purposes of paragraph (2)(F), a termination action shall not be taken with respect to a disadvantaged owner of a program participant solely because of the conviction of an officer of the program participant (who is not a disadvantaged owner) unless the disadvantaged owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of the officer's conviction.

(b) PROCEDURE.—

(1) INITIATION OF PROCEEDING.—The Director may initiate a termination proceeding by recommending a termination proceeding to the Associate Administrator.

(2) NOTICE OF INTENT TO TERMINATE.—If the Associate Administrator determines that termination is appropriate, the Associate Administrator shall, not later than 15 days after making the determination, provide the program participant written notice of intent to terminate, specifying the reasons for the termination.

§ 23322. Evaluation of eligibility

(a) IN GENERAL.—The Administrator shall conduct an evaluation of a program participant's eligibility for continued participation in the program

whenever the Administrator receives specific and credible information alleging that the program participant no longer meets the requirements for program eligibility.

(b) TERMINATION PROCEEDING.—On making a finding that a program participant is no longer eligible, the Administrator shall initiate a termination proceeding under section 23321 of this title.

(c) SUSPENSION.—A program participant's eligibility for award of a contract under the program may be suspended under subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

§ 23323. Limitation of eligibility to one small business concern

(a) DETERMINATION OF SOCIAL AND ECONOMIC DISADVANTAGE.—Except as provided in subsection (c), an individual who was determined to be socially and economically disadvantaged before August 15, 1989, shall not be permitted to assert such disadvantage with respect to any other concern making application for certification as a small business concern owned and controlled by socially and economically disadvantaged individuals.

(b) ELIGIBILITY AS A SOCIALLY AND ECONOMICALLY DISADVANTAGED SMALL BUSINESS CONCERN.—Except as provided in subsection (c), an individual on whom eligibility as a small business concern owned and controlled by socially and economically disadvantaged individuals is based under section 23101(15) of this title shall be permitted to assert such eligibility for only one small business concern.

(c) EXCEPTION.—An economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance under the program if—

(1) the Indian tribe does not own another concern in the same industry that has been determined to be eligible to receive contracts under the program; and

(2) the individuals responsible for the management and daily operations of the concern do not manage more than 2 program participants.

§ 23324. Limitation on denial of admission into program based on unavailability of specific contract opportunities

An applicant shall not be denied admission into the program based solely on a determination that specific contract opportunities are unavailable to assist in the development of the applicant unless—

(1) the Government has not previously procured and is unlikely to procure the types of products or services offered by the applicant; or

(2) the purchases of such products or services by the Government will not be in quantities sufficient to support the developmental needs of the applicant and other program participants providing the same or similar products or services.

§ 23325. Certification decision

Not later than 90 days after receipt of a completed application for program certification, the Associate Administrator shall—

(1) certify a small business concern as a program participant; or

(2) deny the application.

§ 23326. Review of new entrants into the program

(a) REVIEW.—Thirty days before the conclusion of each fiscal year, the Director shall review all small business concerns that have been admitted into the program during the preceding 12-month period.

(b) DETERMINATION AND ESTIMATE.—In a review under subsection (a), the Director shall—

(1) determine the number of entrants and their geographic distribution and industrial classification; and

(2) estimate—

(A) the expected growth of the program during the next fiscal year; and

(B) the number of additional business opportunity specialists, if any, that will be needed to meet the anticipated demand for the program.

(c) REPORT.—Not later than September 30 of each year, the Director shall report to the Associate Administrator the determination and estimates made under subsection (b).

(d) DIRECTIVES.—

(1) IN GENERAL.—Based on the report under subsection (c) and such additional data as are relevant, the Associate Administrator shall, not later than October 31 of each fiscal year, issue policy and program directives applicable to the fiscal year that—

(A) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

(B) assign staffing levels and allocate other program resources as necessary to meet program needs; and

(C) establish priorities in the processing and admission of new program participants as necessary to achieve an equitable geographic distribution of small business 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.

(2) CONSIDERATIONS.—In considering an increase described in paragraph (1)(C), the Associate Administrator shall give due consideration to industrial categories in which Federal purchases have been substantial but in which the participation rate of small business concerns owned and controlled by socially and economically disadvantaged individuals has been limited.

§ 23327. Program stages

(a) IN GENERAL.—The Administrator shall segment a program participant's participation in the program into a developmental stage and a transitional stage.

(b) DEVELOPMENTAL STAGE.—The developmental stage of program participation shall be designed to assist a program participant in its effort to overcome its economic disadvantage by providing such assistance as is necessary and appropriate to access markets and strengthen its financial and managerial skills.

(c) TRANSITIONAL STAGE.—The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare a program participant for graduation from the program.

(d) AVAILABLE ASSISTANCE.—

(1) IN GENERAL.—A program participant, if otherwise eligible, shall be qualified to receive assistance as provided in this subsection.

(2) CONTRACT SUPPORT.—A program participant in the developmental stage or transitional stage shall be qualified to receive contract support under the program.

(3) FINANCIAL ASSISTANCE.—A program participant in the developmental stage or transitional stage shall be qualified to receive financial assistance under section 20511 of this title.

(4) EMPLOYEE SKILLS TRAINING OR UPGRADING.—

(A) DEFINITION OF TRAINING PROVIDER.—In this paragraph, the term ''training provider'' means an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under title I of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

(B) IN GENERAL.—A program participant in the developmental stage shall be qualified to receive financial assistance under which the Administrator may, without regard to section 10331(*l*) of this title, purchase in whole or in part, on behalf of the program par-

ticipant, skills training or upgrading for employees or potential employees of the program participant.

(C) FORM OF ASSISTANCE.—Financial assistance under subparagraph (B) may be made—

(i) by direct payment to the training provider; or

(ii) by reimbursing the program participant or the program participant's employee, if the Administrator considers reimbursement to be reasonable and appropriate.

(D) LIMITATION.—Financial assistance under subparagraph (B) shall not be granted to a program participant unless the program participant first documents that the program participant has 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.

(E) NUMBER OF EMPLOYEES.—Not more than 5 employees or potential employees of the program participant are recipients of skills training or upgrading under subparagraph (B) at any one time.

(F) AMOUNT.—Not more than $2,500 shall be made available for any one employee or potential employee for skills training or upgrading under subparagraph (B).

(G) LENGTH OF TRAINING OR UPGRADING.—The length of training or upgrading financed under subparagraph (B) shall be not less than one nor more than 6 months.

(H) LENGTH OF EMPLOYMENT.—

(i) ASSURANCES.—Financial assistance under subparagraph (B) shall not be granted to a program participant unless—

(I) the program participant has given adequate assurance that it will employ the trainee or upgraded employee for a period of at least 6 months after the training or upgrading financed under subparagraph (B) has been completed; and

(II) each trainee or upgraded employee has given a similar assurance to remain within the employ of the program participant for that period.

(ii) BREACH.—If a program participant, trainee, or upgraded employee fails to fulfill the assurance under clause (i)—

(I) the Administrator shall be entitled to, and shall make diligent efforts to obtain from the violating pro-

gram participant, trainee, or upgraded employee, the repayment of all funds expended on behalf of the program participant, trainee, or upgraded employee;

(II) such repayment shall be made to the Administrator with such interest and costs of collection as are reasonable; and

(III) the program participant, trainee, or upgraded employee shall be barred from receiving any further assistance under subparagraph (B).

(I) LOCATION.—Training or upgrading financed under subparagraph (B) may take place at a facility of the program participant or of the training provider.

(J) RECORDS.—A program participant that receives assistance under subparagraph (B) shall maintain such records as the Administrator considers appropriate to ensure that this subsection and any other applicable law have not been violated.

(K) REGULATIONS.—The Administrator shall, in consultation with the Secretary of Labor, promulgate regulations to implement this paragraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as are necessary to ensure the integrity of the training effort.

(5) TECHNOLOGY AND SURPLUS PROPERTY TRANSFER.—

(A) IN GENERAL.—A program participant in the developmental stage or transitional stage shall be qualified to receive the transfer of technology or surplus property owned by the United States.

(B) EFFECTUATION.—Activities designed to effect transfers under subparagraph (A)—

(i) shall be developed in cooperation with the heads of Federal agencies; and

(ii) shall include the transfer by grant, license, or sale of technology or property to program participants.

(C) PRIORITY.—Property under subparagraph (A) may be transferred to program participants on a priority basis.

(D) USE.—Technology or property transferred under subparagraph (A)—

(i) shall be used by a program participant during the normal conduct of its business operation; and

(ii) shall not be sold or transferred to any other person (other than the Government) until one year after the program participant's term of participation.

(6) TRAINING IN THE DEVELOPMENT OF BUSINESS PRINCIPLES AND STRATEGIES.—A program participant in the developmental stage or transitional stage shall be qualified to receive training assistance under which the Administrator shall conduct training sessions to assist program participants in the development of business principles and strategies to enhance their ability to compete successfully for contracts in the marketplace.

(7) PARTICIPATION IN JOINT VENTURES, LEADER-FOLLOWER ARRANGEMENTS, AND TEAMING AGREEMENTS.—

(A) IN GENERAL.—A program participant in the transitional stage shall be qualified to participate in 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.

(B) AGENCY PROGRAMS.—Activities under subparagraph (A) shall be undertaken on the basis of programs developed by the Federal agency responsible for the procurement of the major system, with the assistance of the Administrator.

(8) BUSINESS PLANNING TRAINING AND TECHNICAL ASSISTANCE.—A program participant in the transitional stage shall be qualified to receive transitional management business planning training and technical assistance.

§ 23328. Attainment of business activity targets

(a) DEVELOPMENTAL STAGE.—During the developmental stage of participation in the program, a program participant shall take all reasonable efforts within its control to attain the business activity targets contained in its business plan. Those efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administrator that the program participant will engage a reasonable marketing strategy that will maximize its potential to attain its business activity targets.

(b) TRANSITIONAL STAGE.—

(1) IN GENERAL.—During the transitional stage of participation in the program, a program participant shall be subject to regulations regarding business activity targets that are promulgated by the Administrator.

(2) ESTABLISHMENT OF BUSINESS ACTIVITY TARGETS.—The regulations under paragraph (1) shall establish business activity targets applicable to program participants during the fifth year and each succeeding year of program participation. The business activity targets, for

that period of time, shall reflect a reasonably consistent increase in contracts awarded other than under the program, expressed as a percentage of total sales.

(3) ATTAINMENT.—The regulations under paragraph (1) shall require a program participant to attain its business activity targets.

(4) CERTIFICATION OF COMPLIANCE.—The regulations under paragraph (1) shall provide that, before the receipt of any contract to be awarded under the program, the program participant (if it is in the transitional stage) shall certify that it—

(A) has complied with the regulations; or

(B) is in compliance with such remedial measures as have been ordered under regulations promulgated under paragraph (6).

(5) PERFORMANCE REVIEW.—The regulations under paragraph (1) shall require the Administrator to review a program participant's performance regarding attainment of business activity targets during periodic reviews of the program participant's business plan.

(6) REMEDIAL MEASURES.—

(A) IN GENERAL.—The regulations under paragraph (1) shall authorize the Administrator to take appropriate remedial measures with respect to a program participant that fails to attain a required business activity target for the purpose of reducing the program participant's dependence on contracts awarded under the program.

(B) MEASURES.—Remedial measures may include—

(i) assisting the program participant in expanding the dollar volume of its competitive business activity; and

(ii) limiting the dollar volume of contracts awarded to the program participant under the program.

(C) NONREVIEWABILITY.—Except for a remedial measure that would constitute a termination, a remedial measure taken under this paragraph shall not be reviewable under section 23311 of this title.

§ 23329. Program participation period

A program participant may receive assistance under the program for a total period of not longer than 9 years, measured from the date of its certification under section 23325 of this title, of which—

(1) not more than 4 years may be spent in the developmental stage of program participation; and

(2) not more than 5 years may be spent in the transitional stage of program participation.

§ 23330. Collection of data on program operations

The Administrator shall develop and implement a process for the systematic collection of data on the operations of the program.

§ 23331. Approval of contract options and modifications

The Administrator shall make substantial and sustained efforts to achieve a maximum 10-day period as the average processing time for approving options and modifications to contracts awarded under the program and submitted to the Administrator for approval.

§ 23332. Orderly and efficient management of program

The Administrator shall, to the maximum extent practicable, minimize delay, eliminate excess regulation, and require only such paperwork as is necessary to effect the orderly and efficient management of the program and the award of contracts under the program.

§ 23333. Participation in federally funded programs and projects

(a) IN GENERAL.—A small business concern that is certified, or otherwise meets the criteria for participation in any program under the program, shall not be required by any State or political subdivision of a State to meet additional criteria or certification, unrelated to the capability to provide the requested product or service, to participate as a small business concern owned and controlled by socially and economically disadvantaged individuals in any program or project that is funded, in whole or in part, by the Federal Government.

(b) NOTICE OF PARTICIPATION BY THE SECRETARY OF TRANSPORTATION.—The Secretary of Transportation shall notify each State or political subdivision of a State to which the Secretary of Transportation awards a grant or other Federal funds of the criteria for participation by a small business concern owned and controlled by socially and economically disadvantaged individuals in any program or project that is funded, in whole or in part, by the Federal Government.

CHAPTER 235—TECHNICAL AND MANAGEMENT ASSISTANCE

Sec.
23501. Financial assistance for projects providing technical or management assistance.
23502. Eligible projects.
23503. Location of service.

§ 23501. Financial assistance for projects providing technical or management assistance

(a) IN GENERAL.—The Administrator 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 program partici-

pants, with special attention to small business concerns located in areas with high proportions of unemployed or low-income individuals.

(b) FORM OF ASSISTANCE.—The financial assistance authorized for projects under this chapter includes assistance advanced by grant, agreement, or contract.

(c) PAYMENT.—The Administrator may make payments under a grant or contract under this chapter 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.

§ 23502. Eligible projects

(a) IN GENERAL.—Financial assistance under this chapter may be provided for projects, including projects for—

(1) planning and research, including feasibility studies and market research;

(2) the identification and development of new business opportunities;

(3) the furnishing of centralized services with regard to public services and Federal Government programs including the programs authorized under this division and section 20511 of this title;

(4) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

(5) 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 on providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(b) PREFERENCE.—The Administrator shall give preference to projects that promote the ownership, participation in ownership, or management of small business concerns owned by program participants.

§ 23503. Location of service

To the extent feasible, service under this chapter shall be provided in a location that is easily accessible to the program participants served.

DIVISION F—PROCUREMENT ASSISTANCE

CHAPTER 241—GENERAL PROVISIONS

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§ 24101. Definition of executive agency

In this division, the term ''executive agency'' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

§ 24102. Authority

The Administrator shall take an action under this chapter when the Administrator determines that the action is necessary.

§ 24103. Technical, managerial, and informational aids

(a) IN GENERAL.—

(1) ACTIVITIES.—The Administrator shall provide technical, managerial, and informational aids to small business concerns—

(A) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

(B) by cooperating and advising with—

(i) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions; and

(ii) other Federal and State agencies;

(C) by maintaining a clearinghouse for information on managing, financing, and operating small business concerns; and

(D) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate.

(2) NO ENDORSEMENT; APPROPRIATE RECOGNITION.—In cooperating and advising with an entity under paragraph (1)(B)(i), the Administrator shall take such actions as the Administrator determines to be necessary to ensure that—

(A) the cooperation does not constitute or imply an endorsement by the Administrator of the entity or its products or services; and

(B) the Administration receives appropriate recognition in all printed material.

(3) FOR-PROFIT CONCERNS.—The Administrator may provide technical, managerial, and informational aids to small business concerns

through cooperation with a for-profit concern (referred to in this paragraph as a ''cosponsor'') if the Administrator—

(A) takes such action as the Administrator determines to be appropriate to ensure that—

(i) the Administration receives appropriate recognition and publicity;

(ii) the cooperation does not constitute or imply an endorsement by the Administrator of any product or service of the cosponsor;

(iii) unnecessary promotion of the products or services of the cosponsor is avoided; and

(iv) the use of any one cosponsor in a marketing area is minimized; and

(B) develops an agreement, executed on behalf of the Administrator by an employee of the Administration in Washington, the District of Columbia, that, at a minimum—

(i) specifies the terms and conditions of the cooperation; and

(ii) provides that—

(I) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity shall be approved in advance by the Administrator;

(II) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

(III) the Administrator may provide to the cosponsor mailing labels but not lists of names and addresses of small business concerns compiled by the Administrator;

(IV) all printed materials containing the names of both the Administration and the cosponsor shall include a prominent disclaimer that the cooperation does not constitute or imply an endorsement by the Administrator of any product or service of the cosponsor; and

(V) the Administration shall receive appropriate recognition in all cosponsorship printed materials.

(b) VOLUNTEER PROGRAMS.—

(1) IN GENERAL.—In carrying out this section, the Administrator shall establish, conduct, and publicize, and recruit, select, and train volunteers for, and enter into contracts, grants, or cooperative agreements for, volunteer programs, including SCORE and an Active Corps of Executives for the purposes of subsection (a).

(2) STAFF.—To facilitate the implementation of the volunteer programs, the Administrator shall, to the extent and in such amounts as are provided in advance in appropriation Acts, maintain at Administration headquarters, and pay the salaries, benefits, and expenses of, a volunteer and professional staff to manage and oversee the volunteer programs.

(3) CONTRIBUTIONS.—Notwithstanding any other provision of law, SCORE may—

(A) solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this subtitle; and

(B) use payments made by the Administrator under this subsection for such solicitation and management of the contributions received.

(c) USE OF ADMINISTRATION FACILITIES.—The Administrator shall allow any individual or group of persons participating with the Administrator in furtherance of this section to use such of the Administration's office facilities and related material and services (including clerical and stenographic services) as the Administrator considers appropriate.

(d) VOLUNTEERS DEEMED TO BE FEDERAL EMPLOYEES FOR FEDERAL TORT CLAIMS PURPOSES.—A volunteer, while carrying out an activity under this section, shall be deemed to be a Federal employee for purposes of chapter 171 of title 28.

(e) VOLUNTEERS DEEMED TO BE CIVIL EMPLOYEES FOR WORK INJURY COMPENSATION PURPOSES.—A volunteer, while carrying out an activity under this section, shall, for purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries), be deemed to be a civil employee of the United States within the meaning of the term ''employee'' as defined in section 8101 of title 5, and that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed to be that received under the entrance salary for a grade GS–11 employee.

(f) REIMBURSEMENT OF VOLUNTEERS.—

(1) IN GENERAL.—The Administrator may reimburse a volunteer carrying out an activity under this section for—

(A) all necessary out-of-pocket expenses incident to the volunteer's provision of services under this subtitle, or in connection with attendance at a meeting sponsored by the Administration;

(B) the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations that the Administrator shall prescribe; and

(C) travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for individuals serving without pay, while the volunteer is carrying out such an activity away from the volunteer's home or regular place of business.

(2) TREATMENT OF PAYMENTS.—Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to a volunteer serving under this section shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, disability, retirement, public assistance, or similar benefit payments, or minimum wage laws.

(g) LIMITATION ON PROVISION OF SERVICES TO PERSONS WITH A DELINQUENT LOAN.—A volunteer carrying out an activity under this section shall not provide any service to a person with a loan under this subtitle that is delinquent except on a specific request for assistance signed by the person in connection with the delinquency.

(h) GRANTS FOR BUSINESS COUNSELING AND ASSISTANCE.—

(1) IN GENERAL.—In carrying out this section, the Administrator may make a grant to, or enter into a contract or cooperative agreement with, a public or private institution of higher education for the establishment and operation of a small business institute, which shall be used to provide business counseling and assistance to small business concerns through the activities of students enrolled at the institution.

(2) EDUCATIONAL CREDITS.—A student engaged in an activity funded under paragraph (1) shall be entitled to receive educational credit for the activity.

(i) PAYMENT OF EXPENSES IN JUDICIAL OR ADMINISTRATIVE PROCEEDINGS.—Notwithstanding any other provision of law and in accordance with regulations that the Administrator shall prescribe, in a judicial or administrative proceeding arising directly out of the performance of an activity under this section to which a volunteer is made a party, the Administrator may employ counsel and pay counsel fees, court costs, bail, and other expenses incidental to the defense of the volunteer.

§ 24104. Inventory of productive facilities

(a) IN GENERAL.—The Administrator shall—

(1) make a complete inventory of all productive facilities of small business concerns; or

(2) arrange for such an inventory to be made by any other governmental agency that has the facilities.

(b) INFORMATION FROM STATE AGENCIES.—In making an inventory under subsection (a), the Administrator or other governmental agency may request an appropriate agency of a State to furnish an inventory of the pro-

ductive facilities of small business concerns in the State if such an inventory is available or in prospect.

§ 24105. Utilization of productive capacity

The Administrator shall—

(1) coordinate and ascertain the means by which the productive capacity of small business concerns can be most effectively utilized; and

(2) consult and cooperate with officers of the Government having procurement or property disposal powers, in order to utilize the potential productive capacity of plants operated by small business concerns.

§ 24106. Subcontracting to small business concerns

The Administrator shall—

(1) obtain information concerning methods and practices that Government prime contractors utilize in letting subcontracts; and

(2) take action to encourage the letting of subcontracts by prime contractors to small business concerns at prices and on terms and conditions that are fair and equitable.

§ 24107. Size certification

(a) IN GENERAL.—The Administrator shall determine within any industry the concerns that qualify as a small business concern for purposes of this subtitle.

(b) ISSUANCE OF CERTIFICATE.—When requested to do so, the Administrator shall issue a certificate certifying a concern as a small business concern in accordance with the criteria stated in this subtitle and section 10101 of this title.

(c) REVOCATION OF CERTIFICATE.—A certificate issued under subsection (b) shall be subject to revocation when the concern covered by the certificate ceases to qualify as a small business concern.

(d) CONCLUSIVE DETERMINATION.—An officer of the Government having procurement or lending power, or engaging in the disposal of Federal property or allocating materials or supplies, or promulgating regulations affecting the distribution of materials or supplies, shall accept as conclusive the Administrator's determination whether a concern qualifies as a small business concern.

§ 24108. Responsibility certification

(a) DEFINITIONS.—In this section:

(1) CONTRACTING OFFICER.—The term ''contracting officer'' means—

(A) a contracting officer; and

(B) any other officer engaged in the sale and disposal of Federal property.

(2) RESPONSIBILITY.—The term ''responsibility'' includes capability, competency, capacity, credit, integrity, perseverance, and tenacity.

(b) CERTIFICATION.—The Administrator shall certify to a contracting officer with respect to all elements of the responsibility of a small business concern or group of small business concerns to receive and perform a specific Government contract.

(c) NO PRECLUSION FROM AWARD OF CONTRACT WITHOUT REFERRAL TO THE ADMINISTRATOR.—A contracting officer may not, for any reason relating to an element of responsibility as determined under subsection (b), preclude a small business concern or group of small business concerns from being awarded a contract without referring the matter for a final disposition to the Administrator.

(d) CONCLUSIVE DETERMINATION.—A contracting officer shall—

(1) accept as conclusive a certification made under subsection (b) as to the specific Government contract with respect to which the certification is made; and

(2) let the contract to the small business concern or group of small business concerns without requiring the small business concern or group of small business concerns to meet any other requirement of responsibility or eligibility.

(e) NO EXEMPTION.—The Administrator may not establish an exemption from referral or notification or refuse to accept a referral or notification from a contracting officer made under subsection (c), but nothing in this section requires the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

§ 24109. Information pertaining to Federal procurement or production

The Administrator shall obtain from any Federal agency engaged in procurement or in the financing of procurement or production such reports concerning the letting of contracts and subcontracts and the making of loans to business concerns as the Administrator considers pertinent in carrying out the functions of the Administrator under this subtitle and subtitle I.

§ 24110. Information pertaining to disposal of Federal property

The Administrator shall obtain from any Federal agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as the Administrator considers pertinent in carrying out the functions of the Administrator under this subtitle and subtitle I.

§ 24111. Information pertaining to supplies of materials

The Administrator shall obtain from suppliers of materials information pertaining to the method of filling orders for materials, and the bases for allocating their supplies of materials, when it appears that a small business concern is unable to obtain material from its normal sources.

§ 24112. Fair proportions of business for small business concerns

The Administrator shall make studies and recommendations to the appropriate Federal agencies to ensure that—

(1) a fair proportion of the total purchases and contracts for property and services for the Government is placed with small business concerns;

(2) a fair proportion of Government contracts for research and development is placed with small business concerns;

(3) a fair proportion of the total sales of Government property is made to small business concerns; and

(4) a fair and equitable share of materials, supplies, and equipment is available to small business concerns.

§ 24113. Fair and reasonable treatment of small business concerns

The Administrator shall consult and cooperate with all Federal agencies for the purpose of ensuring that small business concerns receive fair and reasonable treatment from Federal agencies.

§ 24114. Information and assistance pertaining to federally aided urban renewal projects

The Administrator shall provide at the earliest practicable time such information and assistance as are appropriate (including information concerning eligibility for loans under section 21303 of this title) to local public agencies (as defined in section 110(h) of the Housing Act of 1949 (42 U.S.C. 1460(h))) and to small business concerns to be displaced by federally aided urban renewal projects in order to assist the small business concerns in reestablishing operations.

§ 24115. Dissemination of information by the Administrator

(a) IN GENERAL.—The Administrator shall disseminate, without regard to section 3204 of title 39, information, in such form as the Administrator considers appropriate, to public agencies, private organizations, and the general public.

(b) INFORMATION ON FEDERAL PROCUREMENT PRACTICES.—The Administrator shall, for each fiscal year—

(1) collect information concerning the procurement practices and procedures of each Federal agency having procurement authority;

(2) publish and disseminate the information to contracting officers in all Federal agencies; and

(3) make the information available to any small business concern that requests the information.

§ 24116. Availability of information from Federal agencies

(a) REQUESTS FOR INFORMATION.—For any contract to be let by any Federal agency, the Federal agency shall provide to any small business concern, on request by the small business concern—

(1) a copy of bid sets and specifications with respect to the contract;

(2) the name and telephone number of an employee of the Federal agency to answer questions with respect to the contract; and

(3) adequate citations to each major Federal law (including a regulation) with which the small business concern must comply in performing the contract.

(b) EXEMPT CONTRACTS.—Subsection (a) does not apply to a contract (or subcontract) that—

(1) will be performed entirely outside the United States; or

(2) is for services that are personal in nature.

§ 24117. Adjustment of regulations and programs to the needs of small business concerns

The Administrator shall—

(1) make studies of matters materially affecting the competitive strength of small business concerns and of the effect on small business concerns of Federal laws (including regulations) and programs; and

(2) make recommendations to Federal agencies as appropriate for the adjustment of regulations and programs to the needs of small business concerns.

§ 24118. Outreach programs for disabled veterans, veterans, and reservists

(a) IN GENERAL.—The Administrator shall make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal agencies and State and local agencies for the establishment and implementation of outreach programs for disabled veterans, veterans, and reservists.

(b) INCREASE IN NUMBER OF VETERANS BUSINESS OUTREACH CENTERS.—The Administrator shall use the authority under subsection (a) to ensure that the number of veterans business outreach centers throughout the United States increases by the number that the Administrator considers appropriate, based on need, for each fiscal year.

CHAPTER 243—SUBCONTRACTING PROVISIONS

Sec.
24301. Opportunity to participate in performance of contracts.
24302. Notice of provisions relating to contracts awarded pursuant to the negotiated method of procurement.
24303. Subcontracting plans.
24304. Incentives.
24305. Liquidated damages.
24306. Material breach.
24307. Effect of chapter.

§ 24301. Opportunity to participate in performance of contracts

(a) IN GENERAL.—The clause stated in subsection (c) shall be included in all contracts let by a Federal agency except a contract described in subsection (b).

(b) EXCEPTED CONTRACTS.—The clause stated in subsection (c) need not be included in—

(1) a contract that does not exceed the simplified acquisition threshold;

(2) a contract (including all subcontracts under the contract) that will be performed entirely outside the United States; or

(3) a contract for a service that is personal in nature.

(c) REQUIRED CLAUSE.—The clause required by subsection (a) is as follows:

"(1) DEFINITIONS.—

"(A) IN GENERAL.—As used in this contract, each of the terms 'qualified HUBZone small business concern', 'small business concern', 'small business concern owned and controlled by service-disabled veterans', 'small business concern owned and controlled by socially and economically disadvantaged individuals', 'small business concern owned and controlled by veterans', and 'small business concern owned and controlled by women' has the meaning given the term in section 10101 of title 53, United States Code.

"(B) PRESUMPTION.—For purposes of applying the definition of 'small business concern owned and controlled by socially and economically disadvantaged individuals', the contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other minorities, or any other individual found to be disadvantaged by the United States Small Business Administration.

"(2) POLICY.—It is the policy of the United States that qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned

and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns.

''(3) AGREEMENT.—The contractor agrees—

''(A) to carry out the policy stated in paragraph (2) in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract; and

''(B) to cooperate in any studies or surveys that may be conducted by the United States Small Business Administration or the awarding agency of the United States as necessary to determine the extent of the contractor's compliance with this clause.

''(4) RELIANCE ON WRITTEN REPRESENTATION.—The contractor, acting in good faith, may rely on a written representation by a subcontractor regarding its status as a qualified HUBZone small business concern, small business concern owned and controlled by service-disabled veterans, small business concern owned and controlled by socially and economically disadvantaged individuals, small business concern owned and controlled by veterans, small business concern owned and controlled by women, or other small business concern.''

§ 24302. Notice of provisions relating to contracts awarded pursuant to the negotiated method of procurement

(a) REQUIRED CLAUSE.—A solicitation of an offer for a contract described in subsection (b) shall contain a clause notifying potential offering companies of the provisions of this chapter relating to contracts awarded pursuant to the negotiated method of procurement.

(b) CONTRACTS.—A contract referred to in subsection (a) is a contract let by a Federal agency that—

(1) is to be awarded pursuant to the negotiated method of procurement; and

(2) may exceed—

(A) $1,000,000, in the case of a contract for the construction of a public facility; or

(B) $500,000, in the case of any other contract.

§ 24303. Subcontracting plans

(a) DEFINITIONS.—In this section:

(1) BIDDER.—The term ''bidder'' does not include a bidder that is a small business concern.

(2) OFFEROR.—The term ''offeror'' does not include an offeror that is a small business concern.

(b) NEGOTIATED PROCUREMENTS.—

(1) NEGOTIATION.—Before the award of any contract described in paragraph (2), or any amendment or modification to such a contract, the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan that incorporates the information prescribed in subsection (d).

(2) CONTRACTS.—A contract referred to in paragraph (1) is a contract let by a Federal agency that—

(A) is to be (or was) awarded pursuant to the negotiated method of procurement;

(B) is required to include the clause stated in section 24301 of this title;

(C) may exceed—

(i) $1,000,000, in the case of a contract for the construction of a public facility; or

(ii) $500,000, in the case of any other contract; and

(D) offers a subcontracting possibility.

(3) INCLUSION IN CONTRACT.—The subcontracting plan shall be included in and made a material part of the contract.

(4) FAILURE TO NEGOTIATE SUBCONTRACTING PLAN.—If, within the time prescribed in regulations of the procuring agency, the apparent successful offeror fails to negotiate the subcontracting plan required by paragraph (2), the offeror shall be ineligible to be awarded the contract.

(5) PRIOR COMPLIANCE A FACTOR IN DETERMINING RESPONSIBILITY.—Prior compliance of the offeror with other subcontracting plans under this subsection shall be considered by a procuring agency in determining the responsibility of the offeror for the award of the contract.

(6) MAXIMUM OPPORTUNITY.—No contract shall be awarded to any offeror unless the procuring agency determines that the subcontracting plan to be negotiated by the offeror under paragraph (2) provides the

maximum practicable opportunity for qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns, to participate in the performance of the contract.

(c) ADVERTISED PROCUREMENTS.—

(1) REQUIRED CLAUSE.—A solicitation of a bid for a contract described in paragraph (2), or any amendment or modification to such a contract, shall contain a clause requiring any bidder that is selected to be awarded a contract to submit to the procuring agency a subcontracting plan that incorporates the information prescribed in subsection (d).

(2) CONTRACTS.—A contract referred to in paragraph (1) is a contract let by a Federal agency that—

(A) is to be awarded pursuant to the formal advertising method of procurement;

(B) is required to contain the clause stated in section 24301 of this title;

(C) may exceed—

(i) $1,000,000, in the case of a contract for the construction of a public facility; or

(ii) $500,000, in the case of any other contract; and

(D) offers a subcontracting possibility.

(3) INCLUSION IN CONTRACT.—The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(4) FAILURE TO SUBMIT SUBCONTRACTING PLAN.—If, within the time prescribed in regulations of the procuring agency, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by paragraph (1), the bidder shall become ineligible to be awarded the contract.

(5) PRIOR COMPLIANCE A FACTOR IN DETERMINING RESPONSIBILITY.—Prior compliance of the bidder with other subcontracting plans under this subsection shall be considered by the procuring agency in determining the responsibility of the bidder for the award of the contract.

(d) CONTENTS OF SUBCONTRACTING PLAN.—A subcontracting plan shall include—

(1) percentage goals for the utilization as subcontractors of qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns;

(2) the name of an individual within the employ of the offeror or bidder who will administer the subcontracting program of the offeror or bidder and a description of the duties of that individual;

(3) a description of the efforts that the offeror or bidder will take to ensure that qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns will have an equitable opportunity to compete for subcontracts;

(4) assurances that the offeror or bidder will—

(A) include the clause required by section 24301 of this title in all subcontracts that offer further subcontracting opportunities; and

(B) require all subcontractors (except small business concerns) that receive subcontracts in excess of $1,000,000 in the case of a contract for the construction of a public facility, or in excess of $500,000 in the case of any other contract, to adopt a subcontracting plan similar to the subcontracting plan required under subsection (b) or (c);

(5) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the procuring agency or the Administrator to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

(6) a recitation of—

(A) the types of records that the successful offeror or bidder will maintain to demonstrate procedures that are adopted to comply with the requirements and goals set forth in the subcontracting plan, including the establishment of source lists of qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veter-

ans, small business concerns owned and controlled by women, and other small business concerns; and

(B) efforts to identify and award subcontracts to small business concerns.

(e) ATTAINMENT OF GOALS.—

(1) ATTAINABILITY OF GOALS.—A Federal agency shall ensure that the goals offered by an apparent successful bidder or offeror are attainable in relation to—

(A) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(B) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(C) the actual performance of the contractor in fulfilling the subcontracting goals specified in prior subcontracting plans.

(2) CREDIT FOR DEVELOPMENT ASSISTANCE.—For purposes of determining the attainment of a subcontract utilization goal under a subcontracting plan entered into with an executive agency under subsection (b) or (c), a mentor firm that provides development assistance to a protégé firm under the pilot Mentor-Protégé Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2302 note) shall be granted credit for the assistance in accordance with subsection (g) of that section.

(f) BUNDLED CONTRACTS.—The following factors shall be designated by a Federal agency as significant factors for purposes of evaluating offers for a bundled contract if the head of the Federal agency determines that the contract offers a significant opportunity for subcontracting:

(1) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(2) For the evaluation of past performance of an offeror, a factor that is based on the extent to which the offeror attained applicable goals for small business participation in the performance of contracts.

(g) COMPLIANCE ASSISTANCE.—The Administrator may—

(1) assist Federal agencies and businesses in complying with their responsibilities under this section, including the formulation of subcontracting plans;

(2)(A) review any solicitation for any contract to be let under subsection (b) or (c) to determine the maximum practicable opportunity for qualified HUBZone small business concerns, small business con-

cerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns to participate as subcontractors in the performance of any contract resulting from any solicitation; and

(B) submit findings, which shall be advisory in nature, to the procuring agency; and

(3) evaluate compliance with subcontracting plans—

(A) on a contract-by-contract basis; or

(B) in the case of a contractor having multiple contracts, on an aggregate basis.

§ 24304. Incentives

Notwithstanding any other provision of law, a Federal agency, to encourage subcontracting opportunities for qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns, may provide such incentives as the Federal agency considers appropriate to encourage such subcontracting opportunities as are commensurate with the efficient and economical performance of a contract that is let pursuant to the negotiated method of procurement.

§ 24305. Liquidated damages

(a) REQUIRED CLAUSE.—

(1) IN GENERAL.—A contract subject to subsection (b) or (c) of section 24303 of this title shall contain a clause for the payment of liquidated damages on a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on the contractor by this chapter.

(2) INCLUSION IN FEDERAL ACQUISITION REGULATION.—The clause required by paragraph (1) shall be made part of the Federal Acquisition Regulation and promulgated pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b).

(b) DEMONSTRATION OF GOOD FAITH EFFORT.—A contractor shall be afforded an opportunity to demonstrate a good faith effort regarding compliance prior to the contracting officer's final decision regarding the imposition of damages and the amount of damages under subsection (a).

(c) DISPUTE RESOLUTION.—The final decision of a contracting officer regarding the contractor's obligation to pay damages under subsection (a) or the amount of damages shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

§ 24306. Material breach

The failure of a contractor or subcontractor to comply in good faith with—

(1) the clause required under section 24301 of this title; or

(2) a subcontracting plan required of the contractor pursuant under section 24303 of this title to be included in its contract or subcontract;

shall be a material breach of the contract or subcontract.

§ 24307. Effect of chapter

Nothing in this chapter supersedes the requirements of part 331 of title 44, Code of Federal Regulations (or any successor regulation).

CHAPTER 245—NOTICE PROVISIONS

Sec.
24501. Notice provisions.
24502. Availability of complete solicitation package.
24503. Limited applicability to Tennessee Valley Authority.

§ 24501. Notice provisions

(a) IN GENERAL.—Except as provided in subsection (e)—

(1) an executive agency intending to—

(A) solicit bids or proposals for a contract for property or services for a price expected to exceed $25,000; or

(B) place an order, expected to exceed $25,000, under a basic agreement, basic ordering agreement, or similar arrangement;

shall publish a notice described in subsection (d);

(2) an executive agency intending to solicit bids or proposals for a contract for property or services shall post, for a period of not less than 10 days, in a public place at the contracting office issuing the solicitation, a notice of solicitation described in subsection (d)—

(A) in the case of an executive agency other than the Department of Defense, if the contract is for a price expected to exceed $10,000, but not to exceed $25,000; and

(B) in the case of the Department of Defense, if the contract is for a price expected to exceed $5,000, but not to exceed $25,000; and

(3) an executive agency awarding a contract for property or services for a price exceeding $100,000, or placing an order described in paragraph (1)(B) exceeding $100,000, shall furnish for publication by the Secretary of Commerce a notice announcing the award or order if there is likely to be a subcontract under the contract or order.

(b) MEANS OF PUBLICATION.—

(1) NOTICES OF SOLICITATION.—A notice of solicitation required to be published under subsection (a) may be published by electronic means that meet the accessibility requirements under section 18(a)(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(a)(7)).

(2) NOTICES OF SUBCONTRACTING OPPORTUNITY.—

(A) IN GENERAL.—A notice of subcontracting opportunity may be submitted for publication by—

(i) a business concern awarded a contract by an executive agency subject to subsection (a)(3); and

(ii) a business concern that is a subcontractor or supplier (at any tier) to such a business concern having a subcontracting opportunity in excess of $10,000.

(B) CONTENTS.—A notice of a subcontracting opportunity shall include—

(i) a description of the business opportunity that is comparable to the description specified in subparagraphs (A), (B), (C), and (D) of subsection (d)(1); and

(ii) the due date for receipt of offers.

(C) UNIFORM IMPLEMENTATION.—The Federal Acquisition Regulation shall provide for uniform implementation of this paragraph.

(c) LIMITATIONS.—When an executive agency is required by subsection (a)(1) to publish a notice of solicitation, the executive agency shall not—

(1) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(2) in the case of a contract or order estimated to be greater than the simplified acquisition threshold, establish a deadline for the submission of all bids or proposals in response to the notice required by subsection (a)(1) that—

(A) in the case of an order under a basic agreement, basic ordering agreement, or similar arrangement, is earlier than the date that is 30 days after the date on which the notice required by subsection (a)(1)(B) is published;

(B) in the case of a solicitation for research and development, is earlier than the date that is 45 days after the date on which the notice required by subsection (a)(1)(A) is published; or

(C) in any other case, is earlier than the date that is 30 days after the date on which the solicitation is issued.

(d) CONTENTS OF NOTICE.—

(1) IN GENERAL.—A notice of solicitation required by paragraph (1) or (2) of subsection (a) shall include—

(A) an accurate description of the property or services to be contracted for;

(B) provisions that—

(i)(I) state whether the technical data required to respond to the solicitation will not be furnished as part of the solicitation; and

(II) identify the source in the Government, if any, from which the technical data may be obtained; and

(ii)(I) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award; and

(II) if so, identify the office from which a qualification requirement may be obtained;

(C) the name, business address, and telephone number of the contracting officer;

(D) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) that shall be considered by the agency;

(E) in the case of a procurement using procedures other than competitive procedures, a statement of the reason justifying the use of such procedures and the identity of the intended source; and

(F) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold—

(i) a description of the procedures to be used in awarding the contract; and

(ii) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

(2) PROPERTY OR SERVICE DESCRIPTION.—A property or service description under paragraph (1)(A)—

(A) shall not be unnecessarily restrictive of competition; and

(B) shall include, as appropriate, the agency nomenclature, National Stock Number or other part number, and a brief description of the item's form, fit, or function, physical dimensions, predominant material of manufacture, or similar information that will assist a prospective contractor in making an informed business judg-

ment concerning whether the prospective contractor should request a copy of the solicitation.

(e) EXEMPTED ACTIVITIES.—A notice is not required under subsection (a)(1) if—

(1) the proposed procurement—

(A) is for an amount not greater than the simplified acquisition threshold; and

(B) is to be conducted by—

(i) using widespread electronic public notice of the solicitation in a form that allows convenient and universal user access through a single, Governmentwide point of entry; and

(ii) permitting the public to respond to the solicitation electronically;

(2)(A) the notice would disclose the executive agency's needs; and

(B) the disclosure of those needs would compromise the national security;

(3)(A) the proposed procurement would result from acceptance of an unsolicited proposal that demonstrates a unique and innovative research concept; and

(B) the publication of a notice of the unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal;

(4) the proposed procurement would result from acceptance of a proposal submitted under chapter 263;

(5) the procurement is made against an order placed under a requirements contract;

(6) the procurement is made for perishable subsistence supplies;

(7)(A) the procurement is for a utility service other than a telecommunication service; and

(B) only one source is available; or

(8) the procurement is for the service of an expert for use in any litigation or dispute (including preparation for any foreseeable litigation or dispute) that involves or could involve the Federal Government in any trial, hearing, or proceeding before any court, administrative tribunal, or agency, or in any part of an alternative dispute resolution process, whether or not the expert is expected to testify.

§ 24502. Availability of complete solicitation package

(a) IN GENERAL.—An executive agency shall make available to any business concern, or the authorized representative of a business concern, the

complete solicitation package for any ongoing procurement announced in a notice under section 24501 of this title.

(b) FEE.—An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of a solicitation package under subsection (a).

§ 24503. Limited applicability to Tennessee Valley Authority

This chapter applies to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

CHAPTER 247—NONCOMPETITIVE PROCEDURES

Sec.
24701. Limitation on use of noncompetitive procedures.
24702. Limited applicability to Tennessee Valley Authority.

§ 24701. Limitation on use of noncompetitive procedures

(a) IN GENERAL.—An executive agency may not award a contract using procedures other than competitive procedures unless—

(1) except as provided in subsection (c), a written justification for the use of noncompetitive procedures has been approved—

(A) in the case of a contract for an amount exceeding $100,000 (but equal to or less than $1,000,000), by the advocate for competition for the procurement activity;

(B) in the case of a contract for an amount exceeding $1,000,000 (but equal to or less than $10,000,000), by the head of the procurement activity or a delegate who—

(i) if a member of the Armed Forces, is a general or flag officer; or

(ii) if a civilian, is serving in a position classified above GS–15 pursuant to section 5108 of title 5; or

(C) in the case of a contract for an amount exceeding $10,000,000, by the senior procurement executive of the agency designated pursuant to section 16(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 414(c)); and

(2) all other requirements applicable to the use of noncompetitive procedures under title III of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 et seq.) or chapter 137 of title 10, as appropriate, have been satisfied.

(b) NONDELEGABILITY.—The authority of an advocate for competition to approve the use of noncompetitive procedures under subsection (a)(1)(A) and the authority of a senior procurement executive to approve the use of noncompetitive procedures under subsection (a)(1)(C) may not be delegated.

(c) EXCEPTIONS.—The same exceptions as are provided in section 303(f)(2) of the Federal Property and Administrative Services Act of 1949

(41 U.S.C. 253(f)(2)) or section 2304(f)(2) of title 10 shall apply with respect to the requirements of subsection (a)(1) of this section in the same manner as those exceptions apply to the requirements of section 303(f)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(f)(1)) or section 2304(f)(1) of title 10, as appropriate.

§ 24702. Limited applicability to Tennessee Valley Authority

This chapter applies to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.

CHAPTER 249—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Sec.
24901. Definitions.
24902. Establishment of program.
24903. Enhanced small business participation goals.
24904. Procurement procedures.
24905. Reporting and collection of data.
24906. Test plan and policy direction.

§ 24901. Definitions

In this chapter:

(1) DESIGNATED INDUSTRY GROUP.—

(A) IN GENERAL.—The term ''designated industry group'' means—

(i) construction (excluding dredging);

(ii) refuse systems and related services;

(iii) architectural and engineering services (including surveying and mapping);

(iv) non-nuclear ship repair; and

(v) landscaping and pest control services.

(B) CONSTRUCTION.—In subparagraph (A)(i), the term ''construction'' includes a contract award that is assigned a North American Industry Classification System code in—

(i) Subsector 236 (Construction of Buildings);

(ii) Subsector 237 (Heavy and Civil Engineering Construction) (excluding dredging); or

(iii) Subsector 238 (Specialty Trade Contractors).

(C) REFUSE AND RELATED SERVICES.—In subparagraph (A)(ii), the term ''refuse systems and related services'' includes a contract award that is assigned—

(i) a North American Industry Classification System code in Subsector 562 (Waste Management and Remediation Services) except code 56291;

(ii) North American Industry Classification System code 48411 (index item ''local general freight trucking without storage'' only);

(iii) North American Industry Classification System code 48421 (index item ''household goods moving without storage'' only); or

(iv) North American Industry Classification System code 48422 (index item ''local specialized freight without storage'' only).

(D) ARCHITECTURAL AND ENGINEERING SERVICES.—In subparagraph (A)(iii), the term ''architectural and engineering services (including surveying and mapping)'' includes a contract award that—

(i) is assigned North American Industry Classification System code 54131, 54133 (except index item ''traffic engineering''), 54136 (index item ''geophysical surveying services'' only), or 54137; and

(ii) is awarded under the qualification-based selection procedures required by sections 1101 to 1104 of title 40.

(E) LANDSCAPING AND PEST CONTROL SERVICES.—In subparagraph (A)(v), the term ''landscaping and pest control services'' includes a contract award that is assigned North American Industry Classification System code 561710 (relating to extermination and pest control services) or 561730 (relating to landscaping services).

(2) EMERGING SMALL BUSINESS CONCERN.—The term ''emerging small business concern'' means a small business concern whose size is not greater than 50 percent of the numerical size standard applicable to the North American Industry Classification System code assigned to a contracting opportunity.

(3) ENHANCED SMALL BUSINESS PARTICIPATION GOAL.—The term ''enhanced small business participation goal'', with respect to a participating agency, means an enhanced small business participation goal established for the participating agency under section 24903 of this title.

(4) FULL AND OPEN COMPETITION.—The term ''full and open competition'' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(5) PARTICIPATING AGENCY.—

(A) IN GENERAL.—The term ''participating agency'' means an executive agency (as defined in section (4) of the Office of Federal Procurement Policy Act (41 U.S.C. 403)) that the Administrator

for Federal Procurement Policy designates to participate in the program.

(B) EXECUTIVE AGENCIES REQUIRED TO BE DESIGNATED.—Under subparagraph (A), the Administrator for Federal Procurement Policy shall designate to participate in the program—

(i) the Department of Agriculture;

(ii) the Department of Defense (with the Department of the Army, the Department of the Navy, the Department of the Air Force, and the defense agencies reporting separately);

(iii) the Department of Energy;

(iv) the Department of Health and Human Services;

(v) the Department of the Interior;

(vi) the Department of Transportation;

(vii) the Environmental Protection Agency;

(viii) the General Services Administration (with the Public Building Service reporting separately);

(ix) the National Aeronautics and Space Administration; and

(x) the Department of Veterans Affairs.

(C) REPORTING.—The Administrator for Federal Procurement Policy may require any participating agencies to report separately in any manner that the Administrator for Federal Procurement Policy considers appropriate to enhance the attainment of the test activities authorized by this chapter.

(6) PROGRAM.—The term ''program'' means the small business competitiveness demonstration program.

(7) SMALL BUSINESS PARTICIPATION.—The term ''small business participation'' includes the aggregate dollar value of every procurement contract award made to a small business concern, without regard to whether an award was based on restricted or unrestricted competition or was made on a sole source basis.

§ 24902. Establishment of program

(a) IN GENERAL.—There is established a small business competitiveness demonstration program under section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413) to provide for the testing of innovative procurement methods and procedures.

(b) EXECUTIVE AGENT.—The Administrator of Federal Procurement Policy shall designate the Administrator as the executive agent responsible for conducting the testing.

(c) PURPOSE.—The purpose of the program is to demonstrate whether—

(1) the competitive capabilities of small business concerns in certain industry groups will enable the small business concerns to compete successfully on an unrestricted basis for Federal contracting opportunities;

(2) the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Administrator, can expand small business participation in Federal contracting opportunities that have been historically low, despite adequate numbers of qualified small business contractors in the economy; and

(3) expanded use of full and open competition adversely affects small business participation in certain industry groups, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small business concerns.

(d) APPLICABILITY.—The program shall apply to contract solicitations for the procurement of services in the designated industry groups.

§ 24903. Enhanced small business participation goals

(a) ENHANCED GOALS FOR DESIGNATED INDUSTRY GROUPS.—

(1) ESTABLISHMENT OF GOALS.—A participating agency shall establish an annual small business participation goal that is 40 percent of the dollar value of the contract awards for each of the designated industry groups.

(2) GOOD FAITH EFFORT.—In attaining its small business participation goal for contract awards for each of the designated industry groups, a participating agency shall make a good faith effort to ensure that emerging small business concerns are awarded not less than 15 percent of the dollar value of the contract awards for each of the designated industry groups.

(b) SPECIAL ASSISTANCE FOR EMERGING SMALL BUSINESS CONCERNS.—

(1) SMALL BUSINESS RESERVE.—All contract opportunities in the designated industry groups shall be reserved for exclusive competition among emerging small business concerns in accordance with the competition standard specified in section 25108 of this title if the estimated award value of the contract is equal to or less than the greater of—

(A) $25,000; or

(B) such larger dollar amount as may be established under paragraph (2).

(2) ADJUSTMENTS TO THE SMALL BUSINESS RESERVE.—If the goal of awarding emerging small business concerns 15 percent of the total dollar value of contracts in a designated industry group is determined

not to have been attained, on the review of award data conducted in accordance with subsection (d)(1), the Administrator for Federal Procurement Policy, to ensure attainment of the goal, shall prescribe, on a semiannual basis, appropriate adjustments to the dollar threshold for contract opportunities in that designated industry group below which competition shall be conducted exclusively among emerging small business concerns.

(3) SMALL BUSINESS SMALL PURCHASE RESERVE.—The requirements of this subsection dealing with the reserve amount shall apply notwithstanding the amount specified in section 25108 of this title.

(4) EXCLUSION OF MODIFICATIONS TO EXISTING CONTRACTS ABOVE THE SMALL PURCHASE THRESHOLD.—Any modification or follow-on award to a contract having an initial award value in excess of $25,000 shall not be subject to the limitations on competition required by this subsection.

(c) TARGETING OF INDUSTRY GROUPS WITH LIMITED SMALL BUSINESS PARTICIPATION.—

(1) IN GENERAL.—The head of a participating agency shall implement a program to expand small business participation in the participating agency's acquisition of selected products and services in 10 industry groups (other than the designated industry groups) that have historically demonstrated low rates of small business participation.

(2) DEVELOPMENT.—The products and services to be targeted for the small business participation expansion program and the special goals for the program—

(A) shall be developed in conjunction with the Administrator; and

(B) shall be subject to the requirements of section 25106 of this title.

(3) PRODUCTS AND SERVICES.—The products and services selected for the small business participation expansion program shall be drawn from industry groups that—

(A) are the recipients of substantial purchases by the Federal Government;

(B) have less than 10 percent of such annual purchases made from small business concerns; and

(C) have significant amounts of small business productive capacity that have not been utilized by the Government.

(4) REQUIREMENTS.—In developing its small business participation expansion program, a participating agency shall—

(A) provide the Administrator a detailed, time-phased strategy that includes incremental numerical goals; and

(B) encourage and promote joint ventures, teaming agreements, and other similar arrangements that permit small business concerns to compete effectively for contract solicitations for which an individual small business concern would lack the requisite capacity or capability needed to establish responsibility for the award of a contract.

(d) MONITORING OF PARTICIPATING AGENCY PERFORMANCE.—

(1) IN GENERAL.—A participating agency shall monitor the attainment of its small business participation goals on an annual basis. An annual review by each participating agency shall be completed not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30.

(2) COUNTING OF AWARDS.—All awards to small business concerns shall be counted toward attainment of the goals specified in subsection (a).

(3) MODIFICATIONS.—If an annual review discloses that the rate of small business participation is less than 40 percent of the contract awards for a fiscal year, modifications to a participating agency's solicitation practices under section 24904(b) of this title shall be made at the beginning of the fiscal year quarter following the review.

§ 24904. Procurement procedures

(a) FULL AND OPEN COMPETITION.—

(1) IN GENERAL.—Except as provided in subsections (b) and (c), a contract opportunity with an anticipated value of more than $25,000 for the procurement of services from firms in a designated industry group (unless set aside under chapter 233 of this title or section 2323 of title 10) shall be solicited on an unrestricted basis if the participating agency has attained its small business participation goal under section 24903(a) of this title.

(2) WAIVER OF REGULATORY REQUIREMENTS.—Any regulatory requirements that are inconsistent with paragraph (1) shall be waived.

(b) RESTRICTED COMPETITION.—

(1) IN GENERAL.—If a participating agency fails to attain an enhanced small business participation goal, subsequent contracting opportunities that are in excess of the reserve thresholds specified under section 24903(b) of this title shall be solicited through a competition restricted to eligible small business concerns under section 25101 of this title only at the buying activities of the participating agency that failed to attain the enhanced small business participation goal.

(2) RESUMATION OF UNRESTRICTED COMPETITION.—On determining that its contract awards to small business concerns again meet an enhanced small business participation goal, a participating agency shall promptly resume the use of unrestricted solicitations under subsection (a).

(3) TIMING.—A modification in the solicitation practices of a participating agency under this subsection shall be made as soon as practicable, but not later than the beginning of the quarter following completion of the review made under section 24903(d) of this title indicating that a modification to the solicitation practices is required.

(c) RELATIONSHIP TO OTHER LAW.—

(1) COMPETITION IN CONTRACTING ACT OF 1984.—Subsections (a) and (b) do not supersede the application of the Competition in Contracting Act of 1984 (98 Stat. 1175) (including the amendments made by that Act).

(2) OTHER APPLICABLE LAW.—A solicitation for the award of a contract for architectural or engineering service (including surveying and mapping) issued by a military department or a Defense agency shall comply with the requirements of subsections (a) and (b) of section 2855 of title 10.

§ 24905. Reporting and collection of data

(a) AWARDS OF $25,000 OR LESS.—An award of $25,000 or less made by a participating agency for the procurement of a service in any designated industry group shall be reported to the Federal Procurement Data Center in the same manner as if the purchase were in excess of $25,000.

(b) SIZE AND STATUS OF SMALL BUSINESS CONCERNS.—A participating agency shall collect data pertaining to the size of the small business concern and the status of the small business concern (as a small business concern owned and controlled by socially and economically disadvantaged individuals) that receives any award for the procurement of—

(1) a service in any designated industry group; or

(2) a product or service from an industry group selected for participation in the program under section 24903(c) of this title.

§ 24906. Test plan and policy direction

(a) TEST PLAN.—The Administrator for Federal Procurement Policy may further specify the manner and conduct of the test activities required by this chapter through a test plan issued under section 15 of the Office of Federal Procurement Policy Act (41 U.S.C. 413).

(b) POLICY DIRECTION.—The Administrator for Federal Procurement Policy, in cooperation with the Administrator, shall issue a policy directive (which shall be binding on all participating agencies) to ensure consistent

Governmentwide implementation of this chapter in the Federal Acquisition Regulation.

DIVISION G—CONTRACT RESERVATION PROGRAMS

CHAPTER 251—GENERAL PROVISIONS

Sec.
25101. Awards of contracts to small business concerns.
25102. Placement of contracts by procuring agency.
25103. Disabled individuals.
25104. Priority for areas of concentrated unemployment or underemployment and for labor surplus areas.
25105. Procurement strategies; contract bundling.
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25110. Breakout procurement center representatives.
25111. Department of Defense, Coast Guard, and National Aeronautics and Space Administration contract goals.
25112. Actions by procurement center representatives to ensure compliance.
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§ 25101. Awards of contracts to small business concerns

(a) IN GENERAL.—Subject to subsection (b), a small business concern shall receive any award or contract (or any part of an award or contract), and be awarded any contract for the sale of Government property, as to which the Administrator and the contracting procurement or disposal agency determine it to be in the interest of—

(1) maintaining or mobilizing the Nation's full productive capacity;

(2) war or national defense programs;

(3) ensuring that a fair proportion of the total purchases and contracts for property and services for the Government in each industry category are placed with small business concerns; or

(4) ensuring that a fair proportion of the total sales of Government property be made to small business concerns.

(b) NO CHANGE IN PREFERENCES OR PRIORITIES.—Nothing in this subtitle changes any preference or priority established by law with respect to the sale of electric power or other property by the Government or any Government agency.

(c) DETERMINATIONS.—A determination under subsection (a) may be made for individual awards or contracts or for classes of awards or contracts.

(d) INDUSTRY CATEGORIES.—

(1) IN GENERAL.—For purposes of subsection (a)(3), an industry category is a discrete group of similar goods and services.

(2) DETERMINATION.—A discrete group of similar goods and services shall be determined by the Administrator in accordance with the

definition of a United States industry under the North American Industry Classification System, as established by the Office of Management and Budget, except that the Administrator shall limit such an industry category to a greater extent than provided under the North American Industry Classification System if the Administrator receives evidence indicating that further segmentation for purposes of subsection (a)(3) is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry.

(3) LIMITATION.—A market for goods or services may not be segmented under paragraph (2) due to geographic requirements unless—

(A) the Government typically designates the area where work for contracts for such goods or services is to be performed;

(B) Government purchases comprise the major portion of the entire domestic market for such goods or services; and

(C) due to the fixed location of facilities, high mobilization costs, or similar economic factors, it is unreasonable to expect competition from business concerns located outside the general areas where the business concerns are located.

(4) SEGMENTATION OF INDUSTRY CATEGORY OF SHIPBUILDING AND SHIP REPAIR.—The Administrator shall segment the industry category of shipbuilding and ship repair as follows:

(A) Nuclear shipbuilding and repair.

(B) Non-nuclear shipbuilding.

(C) Non-nuclear ship repair, which shall be further segmented by, at least, east coast and west coast facilities.

(e) AVOIDANCE OF CONTRACT BUNDLING.—To foster the participation of small business concerns in the contracting opportunities of the Government, a Federal agency, to the maximum extent practicable, shall—

(1) foster the participation of small business concerns as prime contractors, subcontractors, and suppliers;

(2) structure its contracting requirements to facilitate competition by and among small business concerns, taking all reasonable steps to eliminate obstacles to participation by small business concerns; and

(3) avoid unnecessary and unjustified bundling of contract requirements that precludes participation by small business in procurements as prime contractors.

(f) PROPOSED PROCUREMENTS THAT MAKE PARTICIPATION BY SMALL BUSINESS CONCERNS UNLIKELY.—

(1) NOTIFICATION OF SMALL BUSINESS PROCUREMENT CENTER REPRESENTATIVE.—If—

(A)(i) a proposed procurement includes in its statement of work a good or service currently being performed by a small business concern; and

(ii) the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders prime contract participation by small business concerns unlikely;

(B) a proposed procurement for construction seeks to package or consolidate discrete construction projects; or

(C) a solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administrator;

the procurement activity shall, at least 30 days before issuance of the solicitation, provide to the procurement activity's small business procurement center representative a copy of the proposed procurement and a statement of explanation.

(2) CONTENTS OF STATEMENT OF EXPLANATION.—A statement of explanation under paragraph (1) shall explain—

(A) why the proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(B) why delivery schedules cannot be established on a realistic basis that will encourage participation by small business concerns to the extent consistent with the actual requirements of the Government;

(C) why the proposed acquisition cannot be offered so as to make participation by small business concerns likely;

(D) why construction cannot be procured as separate discrete projects; or

(E) why the procurement activity determined that the bundled contract is necessary and justified.

(3) CONCURRENT PROCESS.—The 30-day notification process shall occur concurrently with other processing steps required before issuance of the solicitation.

(4) ALTERNATIVE PROCUREMENT METHODS.—Within 15 days after receipt of the proposed procurement and statement of explanation, if the procurement center representative believes that the procurement as proposed will render prime contract participation by small business concerns unlikely, the procurement center representative shall recommend to the procurement activity alternative procurement methods that would increase prime contracting opportunities for small business concerns.

(5) FAILURE TO AGREE.—If the Administrator and the contracting procurement agency fail to agree, the Administrator shall appeal the matter to the head of the appropriate Federal agency for determination.

(g) FAIR MARKET PRICE.—A contract may not be awarded under this section if the award of the contract would result in a cost to the procurement activity that exceeds a fair market price.

§ 25102. Placement of contracts by procuring agency

With respect to any work to be performed the amount of which would exceed the maximum amount of a contract for which a surety may be guaranteed against loss under section 32102 of this title, the contracting procurement agency shall, to the extent practicable, place contracts so as to allow more than one small business concern to perform the work.

§ 25103. Disabled individuals

(a) DEFINITION OF COMMITTEE.—In this section, the term "Committee" means the Committee for Purchase From People Who Are Blind or Severely Disabled established under the first section of the Act of June 25, 1938 (41 U.S.C. 46).

(b) PARTICIPATION.—

(1) IN GENERAL.—During fiscal year 1995, public or private organizations for the disabled shall be eligible to participate in programs authorized under this chapter in an aggregate amount not to exceed $40,000,000.

(2) PROCUREMENT LIST.—None of the amounts authorized for participation by paragraph (1) may be placed on the procurement list maintained by the Committee under section 2 of the Act of June 25, 1938 (41 U.S.C. 47).

(c) MONITORING AND EVALUATION.—The Administrator shall monitor and evaluate participation under subsection (b).

(d) APPEAL.—

(1) FILING.—Not later than 10 days after the announcement of a proposed award of a contract by a Federal agency to a public or private organization for the disabled, a for-profit small business concern that has experienced or is likely to experience severe economic injury as the result of the proposed award may file an appeal of the proposed award with the Administrator.

(2) ALLEVIATION OF INJURY.—If a small business concern files an appeal of a proposed award under paragraph (1) and the Administrator, after consultation with the Executive Director of the Committee, finds that the small business concern has experienced or is likely to experience severe economic injury as the result of the proposed award,

not later than 30 days after the filing of the appeal, the Administrator shall require each Federal agency having procurement powers to take such action as is appropriate to alleviate economic injury sustained or likely to be sustained by the small business concern.

(e) MAXIMUM AMOUNT OF AWARDS.—

(1) REPORTING.—A Federal agency having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to subsection (b) is entered into and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern.

(2) DATA COLLECTION.—The Office of Federal Procurement Policy shall collect data reported under paragraph (1) through the Federal procurement data system and shall report the data to the Administrator.

(3) NOTIFICATION.—The Administrator shall notify all Federal agencies having procurement powers when the maximum amount of awards authorized under subsection (b) has been made during any fiscal year.

(f) CONTRACT PERFORMANCE BY DISABLED INDIVIDUALS.—A contract may be awarded under this section only if at least 75 percent of the direct labor performed on each item being produced under the contract in a sheltered workshop or performed in providing each type of service under the contract by a sheltered workshop is performed by disabled individuals.

(g) MULTIYEAR CONTRACTS.—A Federal agency that awards one or more contracts to such a public or private organization for the disabled under this section may use multiyear contracts, if appropriate.

§ 25104. Priority for areas of concentrated unemployment or underemployment and for labor surplus areas

(a) IN GENERAL.—For purposes of this chapter, priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns that shall perform a substantial proportion of the production on the contracts and subcontracts in—

(1) an area of concentrated unemployment or underemployment; or

(2) a labor surplus area.

(b) SETASIDES.—

(1) IN GENERAL.—Notwithstanding any other provision of law, total labor surplus area setasides under part 331 of title 44, Code of Federal Regulations (or any successor regulation), shall be authorized if the Secretary of Defense specifically determines that there is a reasonable expectation that offers will be obtained from a sufficient number of eligible concerns so that awards will be made at reasonable prices.

(2) DETERMINATION OF LABOR SURPLUS AREAS.—

(A) CONSIDERATION OF PERSONS AVAILABLE FOR EMPLOYMENT.—To the extent possible, in determining labor surplus areas, consideration shall be given to persons who would be available for employment were suitable employment available.

(B) CRITERIA IN EFFECT.—For purposes of this chapter, the determination of a labor surplus area shall be made on the basis of the criteria in effect at the time of the determination, except that any minimum population criteria shall not exceed 25,000.

(C) DETERMINATION BY SECRETARY OF LABOR.—A determination of a labor surplus area shall be made by the Secretary of Labor.

§ 25105. Procurement strategies; contract bundling

(a) IN GENERAL.—To the maximum extent practicable, procurement strategies used by a Federal agency having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers.

(b) MARKET RESEARCH.—

(1) IN GENERAL.—Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of a Federal agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

(2) FACTORS.—For purposes of paragraph (1), consolidation of the requirements may be determined as being necessary and justified if, as compared with the benefits that would be derived from contracting to meet those requirements if not consolidated, the Federal Government would derive from the consolidation measurably substantial benefits, including any combination of benefits that, in combination, are measurably substantial.

(3) BENEFITS.—Benefits described in paragraph (2) may include—

(A) cost savings;

(B) quality improvements;

(C) reduction in acquisition cycle times;

(D) better terms and conditions; or

(E) any other benefit.

(4) REDUCTION OF ADMINISTRATIVE OR PERSONNEL COSTS NOT A SUFFICIENT JUSTIFICATION.—A reduction of administrative or personnel costs alone shall not be a justification for bundling of contract requirements unless the cost savings are expected to be substantial in re-

lation to the dollar value of the procurement requirements to be consolidated.

(c) STRATEGY SPECIFICATIONS.—If the head of a procuring agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall—

(1) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

(2) set forth an assessment of the specific impediments to participation by small business concerns as prime contractors that result from the bundling of contract requirements and specify actions designed to maximize small business participation as subcontractors (including suppliers) at various tiers under the contract or contracts that are awarded to meet the requirements; and

(3) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

(d) CONTRACT TEAMING.—

(1) IN GENERAL.—In the case of a solicitation of offers for a bundled contract that is issued by the head of a Federal agency, a small business concern may submit an offer that provides for use of a particular team of subcontractors for the performance of the contract.

(2) EVALUATION.—The head of the Federal agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors.

(3) NO EFFECT ON STATUS AS SMALL BUSINESS CONCERN.—Teaming by a small business concern under this subsection shall not affect the status of the small business concern as a small business concern for any other purpose.

(e) DATABASE AND ANALYSIS WITH RESPECT TO BUNDLED CONTRACTS.—

(1) DATABASE.—The Administrator shall maintain a database containing information regarding—

(A) each bundled contract awarded by a Federal agency; and

(B) each small business concern that has been displaced as a prime contractor as a result of the award of a bundled contract.

(2) ANALYSIS.—For each bundled contract that is to be recompeted as a bundled contract, the Administrator shall determine—

(A) the amount of savings and benefits (in accordance with subsection (b)) achieved under the bundling of contract requirements; and

(B) whether such savings and benefits will continue to be realized if the contract remains bundled, and whether such savings and benefits would be greater if the procurement requirements were divided into separate solicitations suitable for award to small business concerns.

(3) ACCESS TO DATA.—

(A) FEDERAL PROCUREMENT DATA SYSTEM.—To assist in the implementation of this subsection and section 10706 of this title, the Administrator shall have access to information collected through the Federal Procurement Data System.

(B) AGENCY PROCUREMENT DATA SOURCES.—To assist in the implementation of this subsection and section 10706 of this title, the head of each procuring agency shall provide, on request of the Administrator, procurement information collected through existing agency data collection sources.

§ 25106. Goals for participation by small business concerns in procurement contracts

(a) GOVERNMENTWIDE GOALS.—

(1) IN GENERAL.—The President shall annually establish Governmentwide goals for procurement contracts awarded to small business concerns (including qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and other small business concerns).

(2) OVERALL GOAL.—The overall Governmentwide goal for participation by small business concerns shall be established at not less than 23 percent of the total value of all prime contract awards for each fiscal year.

(3) GOALS FOR SPECIFIC TYPES OF SMALL BUSINESS CONCERN.—

(A) QUALIFIED HUBZONE SMALL BUSINESS CONCERNS.—The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 3 percent of the total value of all prime contract awards for each fiscal year.

(B) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The Governmentwide goal for participation by small business concerns owned and controlled by service-disabled veterans shall be established at not less than 3 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(C) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The Governmentwide goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(D) SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN.—The Governmentwide goal for participation by small business concerns owned and controlled by women shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each fiscal year.

(4) FEDERAL AGENCY GOALS.—

(A) IN GENERAL.—Notwithstanding the Governmentwide goal, each Federal agency shall have an annual goal that presents, for that Federal agency, the maximum practicable opportunity for small business concerns (including qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and other small business concerns) to participate in the performance of contracts let by the Federal agency.

(B) CUMULATIVE FEDERAL AGENCY GOALS TO MEET OR EXCEED GOVERNMENTWIDE GOAL.—The Administrator and the Administrator of the Office of Federal Procurement Policy shall, when exercising authority under subsection (b), ensure that the cumulative annual prime contract goals for all Federal agencies meet or exceed the annual Governmentwide prime contract goal established by the President under this subsection.

(5) PROCUREMENT PROCEDURES.—

(A) IN GENERAL.—To facilitate the attainment of a goal for the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals that is established for a Federal agency under this subsection, the head of the Federal agency may enter into contracts using—

(i) less than full and open competition by restricting the competition for such awards to small business concerns owned and controlled by socially and economically disadvantaged individuals; and

(ii) a price evaluation preference not in excess of 10 percent when evaluating an offer received from a small business concern owned and controlled by socially and economically disadvantaged individuals as the result of an unrestricted solicitation.

(B) APPLICABILITY.—Subparagraph (A) does not apply to the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration.

(C) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—

(i) IN GENERAL.—The Federal Acquisition Regulation shall provide for uniform implementation of the authority provided in subparagraph (A).

(ii) MATTERS TO BE ADDRESSED.—The provisions of the Federal Acquisition Regulation under clause (i) shall include—

(I) conditions for the use of advance payments;

(II) provisions for contract payment terms that provide for—

(aa) accelerated payment for work performed during the period for contract performance; and

(bb) full payment for work performed;

(III) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference under subparagraph (A)(ii), to provide a reasonable advantage to small business concerns owned and controlled by socially and economically disadvantaged individuals without effectively eliminating any participation of other small business concerns; and

(IV)(aa) procedures for a person to request the head of a Federal agency to determine whether the use of competitions restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals at a contracting activity of the Federal agency has caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity; and

(bb) guidance for limiting the use of such restricted competitions in the case of any contracting activity and class of contracts determined in accordance with such

procedures to have caused a particular industry category to bear a disproportionate share of the contracts awarded to attain the goal established for that contracting activity.

(D) TERMINATION.—This paragraph shall cease to be effective at the end of September 30, 2003.

(b) FEDERAL AGENCY GOALS.—

(1) IN GENERAL.—The Administrator and the head of each Federal agency shall jointly establish goals for the participation by small business concerns (including qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and other small business concerns) in procurement contracts of the Federal agency.

(2) REQUIREMENTS.—The goals of a Federal agency established under paragraph (1) shall—

(A) present, for that Federal agency, the maximum practicable opportunity for small business concerns (including qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and other small business concerns) to participate in the performance of contracts let by the Federal agency; and

(B) realistically reflect the potential of qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, and other small business concerns to perform such contracts and to perform subcontracts under such contracts.

(3) DISAGREEMENT.—If the Administrator and the head of a Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator for Federal Procurement Policy for final determination.

(4) EXPANSION OF PARTICIPATION.—

(A) IN GENERAL.—For the purpose of establishing goals under this section, the head of a Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agen-

cy, including participation by qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(B) CONSIDERATIONS.—The head of a Federal agency, in attempting to attain such participation, shall consider—

(i) contracts awarded as the result of unrestricted competition; and

(ii) contracts awarded after competition restricted to eligible small business concerns under this chapter and under the business development program.

(c) REPORTING BY FEDERAL AGENCIES.—

(1) IN GENERAL.—At the end of each fiscal year, the head of a Federal agency shall submit to the Administrator a report on the extent of participation by small business concerns (including qualified HUBZone small business concerns, small business concerns owned and controlled by service-disabled veterans, small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by veterans, small business concerns owned and controlled by women, and other small business concerns) in procurement contracts of the Federal agency.

(2) CONTENTS.—A report under paragraph (1) shall contain appropriate justifications for failure to meet the goals under this section.

§ 25107. No effect on certain small business setasides

(a) IN GENERAL.—Nothing in this chapter or any other provision of law precludes exclusive small business setasides for procurements of architectural and engineering services, research, development, test, and evaluation.

(b) AUTHORITY.—A Federal agency may develop setasides described in subsection (a) to further the interests of small business in the areas described in that subsection.

§ 25108. Mandatory contract reservation

(a) IN GENERAL.—A contract for the purchase of a good or service that has an anticipated value greater than $2,500 but not greater than $100,000 shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from 2 or more small business concerns that are—

(1) competitive with market prices; and

(2) competitive with regard to the quality and delivery of the good or service being purchased.

(b) CONSIDERATION OF TIMELY OFFERS.—In carrying out subsection (a), a contracting officer shall consider a responsive offer timely received from an eligible small business concern offeror.

(c) EFFECT OF SECTION.—Nothing in this section precludes an award of a contract with a value not greater than $100,000 under—

(1) division B of this subtitle;

(2) section 2323 of title 10;

(3) section 24903 of this title; or

(4) section 25106(a)(4) of this title.

§ 25109. Offices of Small and Disadvantaged Business Utilization

(a) DEFINITIONS.—In this section:

(1) DIRECTOR.—The term ''Director'' means the Director of Small and Disadvantaged Business Utilization of a Federal agency appointed under subsection (c).

(2) OFFICE.—The term ''Office'' means the Office of Small and Disadvantaged Business Utilization of a Federal agency established by subsection (b).

(b) ESTABLISHMENT OF OFFICES.—There is established in each Federal agency having procurement powers an office to be known as the Office of Small and Disadvantaged Business Utilization.

(c) DIRECTOR.—

(1) IN GENERAL.—The management of an Office shall be vested in an officer or employee of the Federal agency, appointed by the head of the Federal agency, who shall be known as the Director of Small and Disadvantaged Business Utilization for the Federal agency.

(2) LINE OF AUTHORITY.—The Director for a Federal agency shall be responsible only to, and report directly to, the head or deputy head of the Federal agency, except that the Director in the Department of Defense shall be responsible only to, and report directly to, the Secretary of Defense or any other designee of the Secretary.

(d) GENERAL RESPONSIBILITIES.—The Director for a Federal agency shall be responsible for the implementation and execution of the functions and duties under this chapter and divisions E and F that relate to the Federal agency.

(e) DUTIES.—The Director for a Federal agency shall—

(1)(A) identify proposed solicitations that involve significant bundling of contract requirements; and

(B) work with the agency acquisition officials and the Administrator to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small

business concerns as prime contractors or to facilitate small business concern participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued; and

(2) assist small business concerns in obtaining payments, required late payment interest penalties, or information regarding payments due to small business concerns from an executive agency or a contractor, in conformity with chapter 39 of title 31 or any other protection for contractors or subcontractors (including suppliers) that is included in the Federal Acquisition Regulation or any individual agency supplement to the Governmentwide regulation.

(f) SUPERVISORY AUTHORITY.—The Director for a Federal agency shall have supervisory authority over personnel of the Federal agency to the extent that the functions and duties of those personnel relate to functions and duties under this chapter and divisions E and F.

(g) SMALL BUSINESS TECHNICAL ADVISERS.—

(1) ASSIGNMENT.—The Director for a Federal agency shall assign a small business technical adviser to each office to which the Administrator assigns a procurement center representative.

(2) QUALIFICATIONS.—A small business technical adviser—

(A) shall be a full-time employee of the procurement activity; and

(B) shall be well qualified, technically trained, and familiar with the goods or services purchased at the procurement activity.

(3) PRINCIPAL DUTY.—The principal duty of a small business technical adviser shall be to assist the Administration procurement center representative in carrying out duties and functions relating to this chapter and divisions E and F.

(h) COOPERATION AND CONSULTATION.—The Director for a Federal agency shall cooperate, and consult on a regular basis, with the Administrator with respect to carrying out the functions and duties described in subsection (d).

(i) RECOMMENDATIONS CONCERNING AWARD OF CONTRACTS.—

(1) IN GENERAL.—The Director for a Federal agency shall make recommendations to contracting officers concerning whether a particular contract requirement should be awarded pursuant to section 25101 of this title, division E of this subtitle, or section 2323 of title 10.

(2) CONSIDERATIONS.—A recommendation under paragraph (1) shall be made with due regard to the requirements of sections 25111 and 25112 of this title.

(3) DOCUMENTATION OF FAILURE TO ACCEPT RECOMMENDATION.—The failure of a contracting officer to accept a recommendation under

paragraph (1) shall be documented and included within the appropriate contract file.

(j) APPLICABILITY OF SECTION.—This section does not apply to the Administration.

§ 25110. Breakout procurement center representatives

(a) DEFINITION OF MAJOR PROCUREMENT CENTER.—In this section, the term ''major procurement center'' means a procurement center that—

(1) in the opinion of the Administrator, purchases substantial dollar amounts of other than commercial items; and

(2) has the potential to incur significant savings as the result of the assignment of a breakout procurement center representative.

(b) ASSIGNMENT OF BREAKOUT PROCUREMENT CENTER REPRESENTATIVES.—

(1) IN GENERAL.—The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance as may be appropriate.

(2) ADDITIONAL POSITION.—A breakout procurement center representative shall be in addition to the procurement center representative referred to in section 25109(g)(1) of this title.

(c) ADVOCACY.—A breakout procurement center representative shall be an advocate for—

(1) the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which items are used; and

(2) the use of full and open competition, whenever appropriate, for the procurement of goods and services by a major procurement center.

(d) FUNCTIONS.—In addition to carrying out the responsibilities assigned by the Administrator, a breakout procurement center representative may—

(1)(A) attend any provisioning conference or similar evaluation session during which determinations are made concerning whether requirements are to be procured through other than full and open competition; and

(B) make recommendations with respect to those requirements to the members of the conference or session;

(2)(A) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures; and

(B) recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(3)(A) review restrictions on competition arising out of restrictions on the rights of the United States in technical data; and

(B) when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(4) obtain from any governmental source, and make available to personnel of the appropriate activity, technical data necessary for the preparation of a competitive solicitation package for any item of a good or service previously procured noncompetitively due to the unavailability of such technical data;

(5) have access to procurement records and other data of the major procurement center commensurate with the level of the breakout procurement center representative's approved security clearance classification;

(6)(A) receive unsolicited engineering proposals; and

(B) when appropriate—

(i)(I) conduct a value analysis of a proposal to determine whether the proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives; and

(II) forward to personnel of the appropriate activity recommendations with respect to the proposal; or

(ii) forward a proposal without analysis to personnel of the activity responsible for reviewing such proposals, which personnel shall furnish the breakout procurement center representative with information regarding the disposition of the proposal; and

(7) review the systems that account for the acquisition and management of technical data within the major procurement center to ensure that the systems provide the maximum availability and access to data that—

(A) are needed for the preparation of offers to sell to the United States the goods and services to which the data pertain; and

(B) potential offerors are entitled to receive.

(e) APPEAL OF FAILURE TO ACT FAVORABLY ON RECOMMENDATION.—

(1) IN GENERAL.—A breakout procurement center representative may appeal the failure to act favorably on any recommendation made under subsection (d).

(2) PROCEDURE.—An appeal under paragraph (1) shall be filed and processed in the same manner and shall be subject to the same conditions and limitations as an appeal filed by the Administrator under section 25101(f)(5) of this title.

(f) SMALL BUSINESS TECHNICAL ADVISERS.—

(1) IN GENERAL.—The Administrator shall assign and co-locate at least 2 small business technical advisers to each major procurement

center in addition to such other advisers as may be authorized from time to time.

(2) DUTIES.—The sole duties of small business technical advisers assigned under paragraph (1) shall be—

(A) to assist the breakout procurement center representative for the center to which the small business technical advisers are assigned in carrying out the functions described in subsection (d); and

(B) to assist the procurement center representative for each office to which the Administrator assigns a procurement center representative.

(g) STATUS; QUALIFICATIONS.—

(1) IN GENERAL.—A breakout procurement center representative and a small business technical adviser—

(A) shall be full-time employees of the Administration; and

(B) shall be fully qualified, technically trained, and familiar with the goods and services procured by the major procurement center to which the individual is assigned.

(2) ACCREDITED ENGINEER.—In addition to the requirements of paragraph (1), a breakout procurement center representative and at least one small business technical adviser assigned under this section shall be accredited engineers.

(h) PERSONNEL POSITIONS.—The Administrator shall establish personnel positions for breakout procurement representatives and small business technical advisers assigned under this section that are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(i) FAMILIARIZATION SESSIONS.—

(1) IN GENERAL.—At such times as the Administrator considers appropriate, a breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the major procurement center to which the breakout procurement center representative is assigned.

(2) PURPOSE.—A familiarization session shall acquaint the participants with, and instruct the participants in methods designed to further the purposes of, this section.

(j) BRIEFING AND REPORT.—

(1) IN GENERAL.—A breakout procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the major procurement center to which the breakout procurement center representative is assigned.

(2) CONTENTS.—A briefing and report under paragraph (1) shall—

(A) detail the past and planned activities of the breakout procurement center representative; and

(B) contain such recommendations for improvement in the operation of the major procurement center as may be appropriate.

(3) RESPONSE.—The head of the major procurement center shall—

(A) personally receive the briefing and report; and

(B) not later than 60 calendar days after receipt, respond, in writing, to each recommendation made by the breakout procurement center representative.

(k) STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PROCUREMENT CENTER REPRESENTATIVES.—The Administrator and the Comptroller General shall jointly establish standards for measuring—

(1) cost savings achieved through the efforts of breakout procurement center representatives; and

(2) the extent to which competition has been increased as a result of those efforts.

§ 25111. Department of Defense, Coast Guard, and National Aeronautics and Space Administration contract goals

A Federal agency subject to the requirements of section 2323 of title 10 shall, when implementing those requirements—

(1) establish policies and procedures that ensure that there will be no reduction in the number or dollar value of contracts awarded under this chapter or division E to achieve any goal or other program objective; and

(2) ensure that those requirements will not alter or change the procurement process used to implement this chapter or division E.

§ 25112. Actions by procurement center representatives to ensure compliance

A procurement center representative assigned under section 25109 or 25110 of this title, in addition to such other duties as the Administrator may assign, shall—

(1) monitor the performance of the procurement activities to which the procurement center representative is assigned to ascertain the degree of compliance with the requirements of section 25111 of this title;

(2) report to the procurement center representative's immediate supervisors all instances of noncompliance with those requirements; and

(3) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this chapter, division E of this subtitle, and section 2323 of title 10.

§ 25113. Percentages of contract performance

(a) IN GENERAL.—A concern may not be awarded a contract under section 25101 of this title as a small business concern unless the concern agrees that—

(1) in the case of a contract for services (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern;

(2) in the case of a contract for procurement of goods (other than procurement from a regular dealer in such goods), the concern will perform work for at least 50 percent of the cost of manufacturing the goods (not including the cost of materials).

(b) CHANGE IN PERCENTAGE.—The Administrator may change the percentage under paragraph (1) or (2) of subsection (a) if the Administrator determines that a change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(c) REQUIREMENTS APPLICABLE TO OTHER CONTRACTS.—The Administrator shall establish, through public rulemaking, requirements similar to those specified in subsection (a) to be applicable to contracts for general and specialty construction and to contracts for any other industry category not otherwise subject to the requirements of that subsection. The percentage applicable to any such requirement shall be determined in accordance with subsection (b).

CHAPTER 253—HUBZONE PROGRAM

Sec.
25301. Definitions.
25302. Establishment of HUBZone program.
25303. Sole source contracts.
25304. Restricted competition.
25305. Appeal of decision not to award contract.
25306. Price evaluation preference in full and open competition.
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§ 25301. Definitions

In this chapter:

(1) BASE CLOSURE AREA.—The term ''base closure area'' means land within the external boundaries of a military installation that was closed through a privatization process under—

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

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

(C) section 2687 of title 10; or

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

(2) FULL AND OPEN COMPETITION.—The term ''full and open competition'' has the meaning given the term in section 4 of the Office of Federal Procurement Policy Act (41 U.S.C. 403).

(3) HISTORICALLY UNDERUTILIZED BUSINESS ZONE.—The term ''historically underutilized business zone'' means an area located within one or more—

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

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

(D) redesignated areas; or

(E) base closure areas (until the date that is 5 years after the date of final closure of a base closure area).

(4) HUBZONE.—The term ''HUBZone'' means a historically underutilized business zone.

(5) HUBZONE SMALL BUSINESS CONCERN.—The term ''HUBZone small business concern'' means—

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

(B) a small business concern that is—

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

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

(C) a small business concern—

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

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

(D) a small business concern that is—

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

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

(E) a small business concern that is—

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

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

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

(6) PROGRAM.—The term ''program'' means the HUBZone program.

(7) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—The term ''qualified HUBZone small business concern'' means a small business concern—

(i) that certifies in writing to the Administrator (or with respect to which the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures established under section 25309 of this title) that—

(I) it is a HUBZone small business concern—

(aa) under subparagraph (A), (B), (C), (D), or (E) of paragraph (5), and its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone; or

(bb) under paragraph (5)(C), and not fewer than 35 percent of its employees engaged in performing a contract awarded to the small business concern on

the basis of a preference provided under the HUBZone program reside within any Indian reservation governed by one or more of the tribal government owners, or reside within any HUBZone adjoining any such Indian reservation;

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

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

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

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

(cc) in the case of a contract for general or specialty construction or a contract for any other industry category that is not otherwise subject to the requirements of item (aa) or (bb), the small business concern meets requirements established by regulation under section 25309(b) of this title; and

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

(ii) with respect to which no certification made or information provided by the small business concern under clause (i)

has been, in accordance with the procedures established under section 25308 of this title—

(I) successfully challenged by an interested party; or

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

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

(8) QUALIFIED NONMETROPOLITAN COUNTY.—The term ''qualified nonmetropolitan county'' means a county—

(A) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of the Internal Revenue Code of 1986 (26 U.S.C. 143(k)(2)(B))) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of the Internal Revenue Code of 1986 (26 U.S.C. 42(d)(5)(C)(ii)); and

(B) in which—

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

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

(iii) there is located a difficult development area, as designated by the Secretary of Housing and Urban Development in accordance with section 42(d)(5)(C)(iii) of the Internal Revenue Code of 1986 (26 U.S.C. 42(d)(5)(C)(iii)), within Alaska, Hawaii, or any territory or possession of the United States outside the 48 contiguous States.

(9) REDESIGNATED AREA.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''redesignated area'' means—

(i) a census tract that was, but ceases to be, a qualified census tract; and

(ii) a nonmetropolitan county that was, but ceases to be, a qualified nonmetropolitan county.

(B) LIMITATION.—A census tract or nonmetropolitan county described in subparagraph (A) shall cease to be a redesignated area on the later of—

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

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

§ 25302. Establishment of HUBZone program

There is established within the Administration a program to be carried out by the Administrator, to be known as the HUBZone program, to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this chapter.

§ 25303. Sole source contracts

Notwithstanding any other provision of law, a contracting officer may award a sole source contract under the program to a qualified HUBZone small business concern if—

(1) the contracting officer or the Administrator determines that the qualified HUBZone small business concern is a responsible contractor with respect to performance of the contract opportunity;

(2) the contracting officer does not have a reasonable expectation that 2 or more qualified HUBZone small business concerns will submit offers for the contracting opportunity;

(3) the anticipated award price of the contract (including options) will not exceed—

(A) $5,500,000 (subject to adjustment under section 35A of the Office of Federal Procurement Policy Act (41 U.S.C. 431a)), in the case of a contract opportunity assigned a North American Industry Classification System code for manufacturing; or

(B) $3,500,000 (subject to adjustment under section 35A of the Office of Federal Procurement Policy Act (41 U.S.C. 431a)), in the case of all other contract opportunities; and

(4) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

§ 25304. Restricted competition

Notwithstanding any other law, a contract opportunity shall be awarded under the program on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that—

(1) not fewer than 2 qualified HUBZone small business concerns will submit offers; and

(2) the award can be made at a fair market price.

§ 25305. Appeal of decision not to award contract

Notwithstanding any other law, not later than 5 days after the date on which the Administrator is notified of a decision by a contracting officer of a Federal agency not to award a contract opportunity under the program to a qualified HUBZone small business concern, the Administrator may notify the contracting officer of the intent to appeal the contracting officer's decision, and within 15 days after that date the Administrator may file a written request for reconsideration of the contracting officer's decision with the head of the Federal agency.

§ 25306. Price evaluation preference in full and open competition

(a) IN GENERAL.—Subject to subsection (b), in a case in which a contract is to be awarded on the basis of full and open competition, the price offered by a qualified HUBZone small business concern shall be deemed to be lower than the price offered by another offeror (other than another small business concern) if the price offered by the qualified HUBZone small business concern is not more than 10 percent higher than the price offered by the otherwise lowest, responsive, and responsible offeror.

(b) AGRICULTURAL COMMODITIES.—

(1) IN GENERAL.—In the case of a purchase by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

(A) 10 percent for the portion of a contract to be awarded that is not greater than 25 percent of the total volume being procured for each agricultural commodity in a single invitation;

(B) 5 percent for the portion of a contract to be awarded that is greater than 25 percent, but not greater than 40 percent, of the total volume being procured for each agricultural commodity in a single invitation; and

(C) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each agricultural commodity in a single invitation.

(2) TREATMENT OF PREFERENCE.—A contract awarded to a qualified HUBZone small business concern under a preference described in paragraph (1) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

(3) INTERNATIONAL FOOD AID EXPORT OPERATIONS.—The price evaluation preference for a purchase of an agricultural commodity by the Secretary of Agriculture for export operations through an international food aid program administered by the Farm Service Agency shall be 5 percent on the first portion of a contract to be awarded that is not greater than 20 percent of the total volume of each agricultural commodity being procured in a single invitation.

§ 25307. Relationship to other contracting preferences

A procurement may not be made from a source on the basis of a preference under the program if the procurement would otherwise be made from a different source under—

(1) section 4124 or 4125 of title 18; or

(2) the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

§ 25308. Verification of eligibility

(a) IN GENERAL.—In carrying out this chapter, the Administrator shall establish procedures relating to—

(1) the filing, investigation, and disposition by the Administrator of any challenge to the eligibility of a small business concern to receive assistance under the program (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administrator by a small business concern under section 25301(7) of this title); and

(2) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under section 25301(7) of this title.

(b) EXAMINATIONS.—The procedures established under subsection (a) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under section 25301(7) of this title.

(c) PROVISION OF DATA.—On the request of the Administrator, the Secretary of Labor, the Secretary of Housing and Urban Development, and the Secretary of the Interior (or the Assistant Secretary for Indian Affairs) shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this section.

§ 25309. Regulations

(a) CERTIFICATION PROCEDURES.—The Administrator shall by regulation establish procedures for the certification of a small business concern as a qualified HUBZone small business concern.

(b) CONSTRUCTION CONTRACTS AND OTHER CONTRACTS.—The Administrator shall by regulation establish requirements that are similar to the re-

quirements specified in items (aa) and (bb) of section 25301(7)(A)(i)(III) of this title on contracts for general and specialty construction and contracts for any other industry category that would not otherwise be subject to those requirements. The percentage applicable to any such requirement shall be determined in accordance with section 25301(7)(B) of this title.

§ 25310. List of qualified HUBZone small business concerns

The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list, to the extent practicable—

(1) after the Administrator makes the certification required by section 25301(7)(A)(i) of this title regarding a qualified HUBZone small business concern and determines that subparagraph section 25301(7)(A)(ii) of this title does not apply to that qualified HUBZone small business concern, shall include the name, address, and type of business with respect to each such small business concern;

(2) shall be updated by the Administrator not less than annually; and

(3) on request, shall be provided to any Federal agency or other entity.

§ 25311. Penalties

In addition to the penalties described in section 10504 of this title, a small business concern that is determined by the Administrator to have misrepresented the status of that small business concern as a HUBZone small business concern for purposes of this section shall be subject to—

(1) section 1001 of title 18; and

(2) sections 3729 to 3733 of title 31.

CHAPTER 255—SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS

Sec.
25501. Sole source contracts.
25502. Restricted competition.
25503. Relationship to other contracting preferences.
25504. Provision of data.
25505. Verification of eligibility.
25506. Penalties.

§ 25501. Sole source contracts

A contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if—

(1) the Administrator determines that the small business concern owned and controlled by service-disabled veterans is a responsible contractor with respect to performance of the contract opportunity;

(2) the contracting officer does not have a reasonable expectation that 2 or more small business concerns owned and controlled by service-disabled veterans will submit offers for the contracting opportunity;

(3) the anticipated award price of the contract (including options) will not exceed—

(A) $5,000,000, in the case of a contract opportunity assigned a North American Industry Classification System code for manufacturing; or

(B) $3,000,000, in the case of any other contract opportunity; and

(4) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

§ 25502. Restricted competition

A contracting officer may award a contract on the basis of competition restricted to small business concerns owned and controlled by service-disabled veterans if the contracting officer has a reasonable expectation that—

(1) not fewer than 2 small business concerns owned and controlled by service-disabled veterans will submit offers; and

(2) the award can be made at a fair market price.

§ 25503. Relationship to other contracting preferences

A procurement may not be made from a source on the basis of a preference provided under section 25501 or 25502 of this title if the procurement would otherwise be made from a different source under—

(1) section 4124 or 4125 of title 18; or

(2) the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

§ 25504. Provision of data

On the request of the Administrator, the head of any Federal agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this chapter.

§ 25505. Verification of eligibility

(a) IN GENERAL.—In carrying out this chapter, the Administrator shall establish procedures relating to—

(1) the filing, investigation, and disposition by the Administrator of any challenge to the eligibility of a small business concern to receive assistance under this subsection (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administration by a small business concern); and

(2) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern.

(b) EXAMINATIONS.—The procedures established under subsection (a) may provide for program examinations (including random program examina-

tions) by the Administrator of any small business concern making a certification or providing information to the Administrator.

§ 25506. Penalties

In addition to the penalties described in section 10504 of this title, a small business concern that is determined by the Administrator to have misrepresented the status of the small business concern as a small business concern owned and controlled by service-disabled veterans for purposes of this chapter shall be subject to—

(1) section 1001 of title 18; and

(2) sections 3729 to 3733 of title 31.

CHAPTER 257—SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY WOMEN

Sec.
25701. Definition of small business concern owned and controlled by women.
25702. Restricted competition.
25703. Identification of industries.
25704. Provision of data.
25705. Verification of eligibility.
25706. Penalties.

§ 25701. Definition of small business concern owned and controlled by women

In this chapter, the term ''small business concern owned and controlled by women'' has the meaning given the term in section 10101 of this title, except that ownership shall be determined without regard to any community property law.

§ 25702. Restricted competition

(a) IN GENERAL.—A contracting officer may restrict competition for any contract for the procurement of a good or service by the Federal Government to small business concerns owned and controlled by women if—

(1) each of the small business concerns owned and controlled by women is not less than 51 percent owned by one or more women who are economically disadvantaged (for which purpose ownership shall be determined without regard to any community property law);

(2) the contracting officer has a reasonable expectation that 2 or more small business concerns owned and controlled by economically disadvantaged women will submit offers for the contract;

(3) the contract is for the procurement of a good or service with respect to an industry identified by the Administrator under section 25703 of this title;

(4) the anticipated award price of the contract (including options) does not exceed—

(A) $5,000,000, in the case of a contract assigned a North American Industry Classification System code for manufacturing; or

(B) $3,000,000, in the case of any other contract;

(5) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price; and

(6) each of the small business concerns owned and controlled by women—

(A) is certified by a Federal agency, a State government, or a national certifying entity approved by the Administrator, as a small business concern owned and controlled by women; or

(B)(i) certifies to the contracting officer that it is a small business concern owned and controlled by women; and

(ii) provides adequate documentation, in accordance with standards established by the Administrator, to support the certification.

(b) WAIVER.—The Administrator may waive subsection (a)(1) with respect to a small business concern owned and controlled by women if the Administrator determines that the small business concern owned and controlled by women is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

§ 25703. Identification of industries

The Administrator shall conduct a study to identify industries in which small business concerns owned and controlled by women are underrepresented with respect to Federal procurement contracting.

§ 25704. Provision of data

On the request of the Administrator, the head of a Federal agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this chapter.

§ 25705. Verification of eligibility

(a) IN GENERAL.—In carrying out this chapter, the Administrator shall establish procedures relating to—

(1) the filing, investigation, and disposition by the Administrator of any challenge to the eligibility of a small business concern to receive assistance under this chapter (including a challenge, filed by an interested party, relating to the veracity of a certification made or information provided to the Administrator by a small business concern under section 25702(a)(6) of this title); and

(2) verification by the Administrator of the accuracy of any certification made or information provided to the Administrator by a small business concern under section 25702(a)(6) of this title.

(b) EXAMINATIONS.—The procedures established under subsection (a) may provide for program examinations (including random program examinations) by the Administrator of any small business concern making a certification or providing information to the Administrator under section 25702(a)(6) of this title.

§ 25706. Penalties

In addition to the penalties described in section 10504 of this title, a small business concern that is determined by the Administrator to have misrepresented the status of the small business concern as a small business concern owned and controlled by women for purposes of this chapter shall be subject to—

(1) section 1001 of title 18; and

(2) sections 3729 to 3733 of title 31.

DIVISION H—RESEARCH AND DEVELOPMENT

CHAPTER 261—GENERAL PROVISIONS

Sec.
26101. Definitions.
26102. Assistance to small business concerns.
26103. Federal agency cooperation.
26104. Joint research and development programs.

§ 26101. Definitions

In this division:

(1) COMMERCIAL APPLICATION.—The term ''commercial application'' includes testing and evaluation of products, services, or technologies for use in technical or weapons systems.

(2) COOPERATIVE RESEARCH AND DEVELOPMENT.—The term ''cooperative research and development'' means research or research and development conducted jointly by a small business concern and a research institution in which not less than 40 percent of the work is performed by the small business concern and not less than 30 percent of the work is performed by the research institution.

(3) EXTRAMURAL BUDGET.—

(A) IN GENERAL.—The term ''extramural budget'', in reference to the extramural budget of a Federal agency, means the sum of the total obligations minus amounts obligated for research or research and development by employees of the Federal agency in or through Government-owned, Government-operated facilities.

(B) APPLICABILITY TO DEPARTMENT OF ENERGY.—As applied with respect to the Department of Energy, the term ''extramural budget'' does not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs.

(C) APPLICABILITY TO AGENCY FOR INTERNATIONAL DEVELOPMENT.—As applied to the Agency for International Development, the term ''extramural budget'' does not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries.

(4) FEDERAL AGENCY.—

(A) IN GENERAL.—The term ''Federal agency'' means—

(i) an executive agency (as defined in section 105 of title 5); or

(ii) a military department.

(B) EXCLUSION.—The term ''Federal agency'' does not include an agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333 (50 U.S.C. 401 note) (or any successor Executive order)).

(5) FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.—The term ''Federally funded research and development center'' means a federally funded research and development center identified by the National Scientific Foundation in accordance with the Governmentwide Federal Acquisition Regulation issued under section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1)) (or any successor regulation).

(6) FIRST PHASE.—The term ''first phase''—

(A) with respect to an SBIR, means the phase described in paragraph (13)(A); and

(B) with respect to an STTR, means the phase described in paragraph (14)(A).

(7) FUNDING AGREEMENT.—The term ''funding agreement'' means a contract, grant, or cooperative agreement entered into between a Federal agency and a small business concern for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government.

(8) RESEARCH INSTITUTION.—

(A) IN GENERAL.—The term ''research institution'' means a nonprofit institution (as defined in section 4 of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3703)).

(B) INCLUSION.—The term ''research institution'' includes a federally funded research and development center.

(9) RESEARCH OR RESEARCH AND DEVELOPMENT.—The term ''research or research and development'' means an activity that is—

(A) a systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(B) a systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(C) a systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(10) SBIR.—The term ''SBIR'' means a small business innovation research program.

(11) SBIR AGENCY.—The term ''SBIR agency'' means a Federal agency that is required by section 26301 of this title to have an SBIR.

(12) SECOND PHASE.—The term ''second phase''—

(A) with respect to an SBIR, means the phase described in paragraph (13)(B); and

(B) with respect to an STTR, means the phase described in paragraph (14)(B).

(13) SMALL BUSINESS INNOVATION RESEARCH PROGRAM.—The term ''small business innovation research program'' means a program under which a portion of a Federal agency's research or research and development effort is reserved for award to small business concerns through a uniform process having—

(A) a first phase for determining, insofar as possible, the scientific and technical merit and feasibility of ideas that appear to have commercial potential, as described in subparagraph (B), submitted pursuant to SBIR solicitations;

(B) a second phase, to further develop proposals that meet particular program needs, in which awards shall be made based on the scientific and technical merit and feasibility of the proposals, as evidenced by the first phase, considering, among other things, the proposal's commercial potential, as evidenced by—

(i) the small business concern's record of successfully commercializing SBIR or other research;

(ii) the existence of second phase funding commitments from private sector or non-SBIR funding sources;

(iii) the existence of third phase, follow-on commitments for the subject of the research; and

(iv) the presence of other indicators of the commercial potential of the idea; and

(C) where appropriate, a third phase—

(i) in which commercial applications of SBIR-funded research or research and development are funded—

(I) by non-Federal sources of capital; or

(II) for products or services intended for use by the Federal Government, by follow-on non-SBIR Federal funding awards; or

(ii) for which awards from non-SBIR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria.

(14) SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM.—The term ''small business technology transfer program'' means a program under which a portion of a Federal agency's extramural research or research and development effort is reserved for award to small business concerns for cooperative research and development through a uniform process having—

(A) a first phase, to determine, to the extent possible, the scientific, technical, and commercial merit and feasibility of ideas submitted pursuant to STTR solicitations;

(B) a second phase, to further develop proposed ideas to meet particular program needs, in which awards shall be made based on the scientific, technical, and commercial merit and feasibility of the idea, as evidenced by the first phase and by other relevant information; and

(C) where appropriate, a third phase—

(i) in which commercial applications of STTR-funded research or research and development are funded—

(I) by non-Federal sources of capital; or

(II) for products or services intended for use by the Federal Government, by follow-on non-STTR Federal funding awards; and

(ii) for which awards from non-STTR Federal funding sources are used for the continuation of research or research and development that has been competitively selected using peer review or scientific review criteria.

(15) STTR.—The term ''STTR'' means a small business technology transfer program.

(16) STTR AGENCY.—The term ''STTR agency'' means a Federal agency that is required by section 26321 of this title to have an STTR.

(17) THIRD PHASE.—The term ''third phase''—

(A) with respect to an SBIR, means the phase described in paragraph (13)(C); and

(B) with respect to an STTR, means the phase described in paragraph (14)(C).

(18) THIRD PHASE AGREEMENT.—The term ''third phase agreement'' means a follow-on, non-SBIR-funded contract or non-STTR-funded contract described in paragraph (13)(C) or (14)(C).

§ 26102. Assistance to small business concerns

The Administrator shall—

(1) assist small business concerns in obtaining Government contracts for research and development;

(2) assist small business concerns in obtaining the benefits of research and development performed under Government contracts or at Government expense;

(3) provide technical assistance to small business concerns to accomplish the purposes of this division;

(4) develop and maintain a source file and an information program to assure each qualified and interested small business concern the opportunity to participate in Federal agency SBIRs and STTRs;

(5) coordinate with participating Federal agencies a schedule for release of SBIR and STTR solicitations, and prepare a master release schedule so as to maximize the opportunity of small business concerns to respond to solicitations;

(6) independently survey and monitor the operation of SBIRs and STTRs within participating Federal agencies; and

(7) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing).

§ 26103. Federal agency cooperation

The Administrator may consult and cooperate with, and make studies and recommendations to, all Federal agencies and the Government Accountability Office, and a Federal agency or the Government Accountability Office shall cooperate with the Administrator in order to carry out and to accomplish the purposes of this division.

§ 26104. Joint research and development programs

(a) IN GENERAL.—The Administrator may consult with representatives of small business concerns with a view to assisting and encouraging small business concerns in undertaking joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose.

(b) PURPOSES.—A joint program under subsection (a) may, among other things, include the purposes of—

(1) constructing, acquiring, or establishing a laboratory or other facility for the conduct of research;

(2) undertaking and utilizing applied research;

(3) collecting research information related to a particular industry and disseminating the information to participating members;

(4) conducting applied research on a protected, proprietary, and contractual basis with member or nonmember concerns, Government agencies, and others;

(5) prosecuting applications for patents and rendering patent services for participating members; and

(6) negotiating and granting licenses under patents held under the joint program and establishing corporations designed to exploit particular patents obtained by the joint venture.

(c) APPROVAL OF AGREEMENTS.—After consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, the Administrator may approve an agreement between small business concerns providing for a joint program of research and development if the Administrator determines that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation.

(d) WITHDRAWAL OF APPROVAL.—The Administrator or the Attorney General may at any time withdraw approval of the agreement and the joint program of research and development covered by the agreement if the Administrator or Attorney General determines that the agreement or the joint program is no longer in the best interests of the competitive free enterprise system and the economy of the Nation.

(e) PUBLICATION IN FEDERAL REGISTER.—A copy of an approval or disapproval and of any determination made under subsection (c) or (d) shall be published in the Federal Register.

(f) NONDELEGABILITY.—The authority of the Administrator under this section may not be delegated.

(g) NO VIOLATION OF ANTITRUST LAWS OR FEDERAL TRADE COMMISSION ACT.—

(1) IN GENERAL.—Subject to paragraph (2), no act or omission to act pursuant to and within the scope of a joint program for research and development under an agreement approved by the Administrator under this section shall be within the prohibitions of the antitrust laws or the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(2) WITHDRAWAL OF APPROVAL.—On publication in the Federal Register of the notice of withdrawal of approval of an agreement granted under this section, by the Administrator or by the Attorney General, this section shall not apply to any subsequent act or omission to act by reason of the agreement or the approval.

CHAPTER 263—SBIRs AND STTRs

Subchapter I—SBIRs

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Subchapter I—SBIRs

§ 26301. Federal agency SBIRs

(a) SBIR BUDGET.—A Federal agency that has an extramural budget for research or research and development in excess of $100,000,000 for any fiscal year shall expend with small business concerns not less than 2.5 percent of the extramural budget specifically in connection with an SBIR that meets the requirements of this division (including policy directives under section 26304 of this title).

(b) LIMITATIONS.—An SBIR agency shall not—

(1) use any of its SBIR budget established under subsection (a) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

(2) make available for the purpose of meeting the requirements of subsection (a) an amount of its extramural budget for basic research that exceeds the percentage specified in subsection (a).

(c) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—A funding agreement with a small business concern for research or research and development that results from a competitive or single source selection other than

an SBIR shall not be considered to meet any portion of the percentage requirement of subsection (a).

§ 26302. Administration of SBIRs by Federal agencies

(a) IN GENERAL.—An SBIR agency shall, in accordance with this division (including policy directives under section 26304 of this title)—

(1) unilaterally determine categories of projects to be in its SBIR;

(2) issue SBIR solicitations in accordance with a schedule determined cooperatively with the Administrator;

(3) unilaterally determine research topics within the SBIR agency's SBIR solicitations, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by—

(A) the National Critical Technologies Panel in the reports required under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683) (as in effect before January 1, 2001); or

(B) the Secretary of Defense, in the reports required under section 2522 of title 10 (as in effect before February 10, 1996);

(4) unilaterally receive and evaluate proposals resulting from SBIR proposals;

(5) subject to section 26310(b) of this title—

(A) unilaterally select awardees for its SBIR funding agreements; and

(B) inform each awardee under a funding agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;

(6) administer its own SBIR funding agreements (or delegate such administration to another Federal agency);

(7)(A) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements; and

(B) in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements;

(8)(A) include a section on its SBIR in its annual performance plan required by subsections (a) and (b) of section 1115 of title 31; and

(B) submit that section to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Science and Committee on Small Business of the House of Representatives;

(9) collect, and maintain in a common format in accordance with section 26344 of this title, such information from awardees as is necessary to assess the SBIR, including information necessary to maintain the database under section 26341 of this title; and

(10) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing).

(b) RESEARCH AND DEVELOPMENT FOCUS.—

(1) REVISION AND UPDATE OF CRITERIA AND PROCEDURES OF IDENTIFICATION.—In carrying out subsection (a), the Secretary of Defense shall, not less often than once every 4 years, revise and update the criteria and procedures used to identify areas of the research and development efforts of the Department of Defense that are suitable for the provision of funds under the SBIR and the STTR of the Department of Defense.

(2) USE OF PLANS.—The criteria and procedures described in paragraph (1) shall be developed through the use of the most current versions of the following plans:

(A) The Joint Warfighting Science and Technology Plan required under section 270 of the National Defense Authorization Act for Fiscal Year 1997 (10 U.S.C. 2501 note; Public Law 104–201).

(B) The Defense Technology Area Plan of the Department of Defense.

(C) The Basic Research Plan of the Department of Defense.

(3) INPUT IN IDENTIFICATION OF AREAS OF EFFORT.—The criteria and procedures described in paragraph (1) shall include input in the identification of areas of research and development efforts described in that paragraph from Department of Defense program managers and program executive officers.

§ 26303. Funding agreement goals

(a) IN GENERAL.—A Federal agency that has a budget for research or research and development in excess of $20,000,000 for any fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns.

(b) NO BACKSLIDING.—No goal established by a Federal agency under subsection (a) shall be less than the percentage of the Federal agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.

§ 26304. SBIR policy directives

(a) IN GENERAL.—The Administrator, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Of-

fice of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall issue policy directives for the general conduct of the SBIRs within the Federal Government.

(b) MATTERS TO BE PROVIDED FOR.—Policy directives under subsection (a) shall provide for—

(1) simplified, standardized, and timely SBIR solicitations;

(2) a simplified, standardized funding process that provides for—

(A) the timely receipt and review of proposals;

(B) outside peer review for at least phase two proposals, if appropriate;

(C) protection of proprietary information provided in proposals;

(D) selection of awardees;

(E) retention by a small business concern of the rights to data generated by the small business concern in the performance of an SBIR award for a period of not less than 4 years;

(F) transfer of title to property provided by a Federal agency to a small business concern if such a transfer would be more cost effective than recovery of the property by the Federal agency;

(G) cost sharing; and

(H) cost principles and payment schedules;

(3) exemptions from the policy directives under paragraph (2) if national security or intelligence functions clearly would be jeopardized;

(4) minimizing the regulatory burden associated with participation in an SBIR for a small business concern so as to stimulate the cost-effective conduct of Federal research and development and the likelihood of commercialization of the results of research and development conducted under the SBIR;

(5) the submission by a Federal agency to the Administrator and the Office of Science and Technology Policy of a simplified, standardized, and timely annual report on its SBIR;

(6) standardized and orderly withdrawal from SBIR participation by a Federal agency;

(7) the voluntary participation in an SBIR by a Federal agency not required by section 26301 of this title to have an SBIR;

(8) continued use by a small business concern participating in the third phase of an SBIR, as a directed bailment, of any property transferred by a Federal agency to the small business concern in the second phase of an SBIR for a period of not less than 2 years, beginning on the initial date of the small business concern's participation in the third phase of an SBIR;

(9) procedures to ensure, to the extent practicable, that a Federal agency that intends to pursue research, development, or production of a technology developed by a small business concern under an SBIR enters into a follow-on, non-SBIR funding agreement with the small business concern for the research, development, or production;

(10) limits in the amounts of funds that a Federal agency may award of $100,000 in the first phase of an SBIR and $750,000 in the second phase of an SBIR, adjusted once every 5 years to reflect economic adjustments and programmatic considerations;

(11) a process for notifying SBIR agencies and potential SBIR participants of the critical technologies, as identified—

(A) by the National Critical Technologies Panel in accordance with section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683) (as in effect before January 1, 2001); or

(B) by the Secretary of Defense in accordance with section 2522 of title 10 (as in effect before February 10, 1996);

(12)(A) enhanced outreach efforts to increase the participation of small business concerns owned and controlled by socially and economically disadvantaged individuals and the participation of small business concerns owned and controlled by women in technological innovation and in SBIRs, including the third phase of SBIRs; and

(B) the collection of data to document that participation;

(13) technical and programmatic guidance to encourage Federal agencies to develop gap-funding programs to address the delay between an award for the first phase of an SBIR and the application for and extension of an award for the second phase of the SBIR;

(14) procedures to ensure that a small business concern that submits a proposal for a funding agreement for the first phase of an SBIR and that has received more than 15 second phase SBIR awards during the preceding 5 fiscal years is able to demonstrate the extent to which the small business concern was able to secure third phase funding to develop concepts resulting from previous second phase SBIR awards;

(15) the requirement of a succinct commercialization plan with each application for a second phase SBIR award that is moving toward commercialization;

(16) a requirement that a Federal agency report to the Administrator, not less frequently than annually, all instances in which the Federal agency pursued research, development, or production of a technology developed by a small business concern using an award made under the SBIR of the Federal agency and determined that it was not

practicable to enter into a follow-on non-SBIR funding agreement with the small business concern; and

(17) implementation of section 26344 of this title, including establishing standardized procedures for the provision of information under section 26341(c) of this title.

(c) PHASED WITHDRAWAL FROM SBIR PROGRAM.—At the discretion of the Administrator, the policy directive under subsection (b)(6) may require a phased withdrawal over a period of time sufficient in duration to minimize any adverse impact on small business concerns.

(d) RIGHTS TO DATA.—The rights provided for under subsection (b)(1)(E) shall apply to all Federal funding awards under this division, including first phase, second phase, and third phase awards.

(e) REPORTS ON IMPRACTICABILITY OF FOLLOW-ON AGREEMENTS.—A report under subsection (b)(16) shall include, at a minimum—

(1) the reasons why the follow-on funding agreement with the small business concern was not practicable;

(2) the identity of the entity with which the Federal agency contracted to perform the research, development, or production; and

(3) a description of the type of funding agreement under which the research, development, or production was obtained.

§ 26305. Discretionary technical assistance

(a) IN GENERAL.—An SBIR agency may enter into an agreement with a vendor selected under subsection (b) to provide small business concerns engaged in SBIR projects with technical assistance services, such as access to a network of scientists and engineers engaged in a wide range of technologies or access to technical and business literature available through online data bases, for the purpose of assisting the small business concerns in—

(1) making better technical decisions concerning the projects;

(2) solving technical problems that arise during the conduct of the projects;

(3) minimizing technical risks associated with the projects; and

(4) developing and commercializing new commercial products and processes resulting from the projects.

(b) VENDOR SELECTION.—

(1) IN GENERAL.—An SBIR agency may select a vendor to assist small business concerns in meeting the goals listed in subsection (a) for a term not to exceed 3 years.

(2) COMPETITION.—Selection of a vendor shall be competitive and shall use merit-based criteria.

(c) ADDITIONAL TECHNICAL ASSISTANCE.—

(1) FIRST PHASE.—An SBIR agency may provide services described in subsection (a) to first phase SBIR award recipients in an amount equal to not more than $4,000, which shall be in addition to the amount of the recipient's award.

(2) SECOND PHASE.—An SBIR agency described in subsection (a) may authorize any second phase SBIR award recipient to purchase, with funds available from its SBIR awards, services described in subsection (a), in an amount equal to not more than $4,000 per year.

§ 26306. Coordination of technology development programs

(a) DEFINITION OF TECHNOLOGY DEVELOPMENT PROGRAM.—In this section, the term ''technology development program'' means—

(1) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 113 of the National Science Foundation Authorization Act of 1988 (42 U.S.C. 1862g);

(2) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(3) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

(4) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

(5) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

(6) the Institutional Development Award Program of the National Institutes of Health; and

(7) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

(b) COORDINATION REQUIREMENTS.—A Federal agency that is subject to section 26301 of this title and that has established a technology development program may, in each fiscal year, review for funding under the technology development program—

(1) a proposal to provide outreach and assistance to one or more small business concerns interested in participating in the Federal agency's SBIR (including a proposal to make a grant or loan to a business concern to pay a portion or all of the cost of developing an SBIR proposal) from an entity, organization, or individual located in—

(A) a State that is eligible to participate in the technology development program; or

(B) a State described in subsection (c); or

(2) a proposal for the first phase of the SBIR program (if the proposal, though meritorious, is not funded through the SBIR program for

that fiscal year due to funding restraints) from a small business concern located in—

(A) a State that is eligible to participate in the technology development program; or

(B) a State described in subsection (c).

(c) ADDITIONALLY ELIGIBLE STATE.—A State referred to in paragraph (1)(B) or (2)(B) of subsection (b) is a State in which the total value of contracts awarded to small business concerns under all SBIRs is less than the total value of contracts awarded to small business concerns in a majority of other States, as determined by the Administrator in even-numbered fiscal years, based on the most recent statistics compiled by the Administrator.

§ 26307. Purchase of American-made equipment and products

(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of Congress that an entity that is awarded a funding agreement under the SBIR of a Federal agency should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible in keeping with the overall purposes of the SBIR.

(b) NOTICE TO SBIR AWARDEES.—A Federal agency that awards a funding agreement under an SBIR shall provide to each recipient of such an award a notice describing the sense of the Congress stated in subsection (a).

§ 26308. Use of Department of Agriculture extramural budget funds

All funds appropriated that are determined to be part of the extramural budget of the Department of Agriculture for any fiscal year for purposes of meeting the requirements of this division shall be available for funding agreements with small business concerns for any purpose in furtherance of the SBIR of the Department of Agriculture. Such funds may be transferred for that purpose from one appropriation account to another or to a single account.

§ 26309. Commercialization pilot program

(a) IN GENERAL.—The Secretary of Defense and each Secretary of a military department may create and administer a commercialization pilot program to accelerate the transition of technologies, products, and services developed under the SBIR of the Department of Defense or of the military department to the third phase, including the acquisition process.

(b) IDENTIFICATION OF RESEARCH PROGRAMS FOR ACCELERATED TRANSITION TO ACQUISITION PROCESS.—In carrying out a commercialization pilot program, the Secretary of Defense and the Secretary of each mili-

tary department shall identify research programs of an SBIR that have the potential for rapid transitioning to the third phase and into the acquisition process.

(c) LIMITATION.—No research program of a military department may be identified under subsection (b) unless the Secretary of the military department certifies in writing that the successful transition of the research program to the third phase and into the acquisition process is expected to meet high priority military requirements of the military department.

(d) FUNDING.—

(1) IN GENERAL.—For payment of expenses incurred to administer the commercialization pilot program under this subsection, the Secretary of Defense and a Secretary of a military department may use not more than an amount equal to one percent of the funds available to the Department of Defense or the military department under an SBIR.

(2) USE OF FUNDS.—Funds used as described in paragraph (1)—

(A) shall not be subject to the limitations on the use of funds in section 26301(b) of this title; and

(B) shall not be used to make third phase awards.

(e) EVALUATIVE REPORT.—

(1) IN GENERAL.—At the end of each fiscal year, the Secretary of Defense shall submit to the Committee on Armed Services and Committee on Small Business and Entrepreneurship of the Senate and the Committee on Armed Services and Committee on Small Business of the House of Representatives an evaluative report regarding activities under the commercialization pilot program.

(2) CONTENTS.—A report under paragraph (1) shall include—

(A) an accounting of the funds used in the commercialization pilot program;

(B) a detailed description of the commercialization pilot program, including incentives and activities undertaken by acquisition program managers, program executive officers, and prime contractors; and

(C) a detailed compilation of results achieved by the commercialization pilot program, including the number of small business concerns assisted and the number of projects commercialized.

(f) SUNSET.—A commercialization pilot program under this section shall terminate at the end of fiscal year 2009.

§ 26310. Reports by Federal agencies

(a) ANNUAL REPORT.—An SBIR agency shall annually submit to the Administrator and the Office of Science and Technology Policy a report on the Federal agency's SBIR.

(b) REPORTING OF AWARDS MADE FROM SINGLE PROPOSALS, AWARDS TO MULTIPLE AWARD WINNERS, AND AWARDS TO CRITICAL TECHNOLOGY TOPICS.—

(1) SINGLE PROPOSAL.—If an SBIR agency makes an award with respect to an SBIR solicitation topic or subtopic for which the Federal agency received only one proposal, the SBIR agency shall provide written justification for making the award in its next quarterly report to the Administrator and in the SBIR agency's next annual report required under subsection (a).

(2) MULTIPLE AWARDS.—An SBIR agency shall include in its next annual report required under subsection (a) an accounting of the awards that the SBIR agency has made for the first phase of its SBIR during the reporting period to entities that have received more than 15 awards for the second phase of the SBIR during the preceding 5 fiscal years.

(3) CRITICAL TECHNOLOGY AWARDS.—

(A) IN GENERAL.—An SBIR agency shall include in its next annual report required under subsection (a) an accounting of the number of awards that the SBIR agency has made to critical technology topics described in section 26302(3) of this title.

(B) CONTENTS.—An accounting under subparagraph (A) shall—

(i) include an identification of the specific critical technologies topics; and

(ii) disclose the percentage by number and dollar amount of the SBIR agency's total SBIR awards to critical technology topics.

(c) NUMBER AND DOLLAR AMOUNT OF AWARDS.—

(1) IN GENERAL.—A Federal agency required by section 26301 of this title to have an SBIR or to establish goals shall annually submit to the Administrator a report that discloses—

(A) the number of awards pursuant to grants, contracts, or cooperative agreements over $10,000 in amount; and

(B) the dollar value of all such awards.

(2) CONTENTS.—A report under paragraph (1) shall identify SBIR awards and compare the number and amount of those awards with awards to other than small business concerns.

(3) CALCULATION OF EXTRAMURAL BUDGET.—

(A) METHODOLOGY.—Not later than 4 months after the date of enactment of each appropriations Act for an SBIR agency, the SBIR agency shall submit to the Administrator a report that includes a description of the methodology used for calculating the amount of the extramural budget of that SBIR agency.

(B) ADMINISTRATOR'S ANALYSIS.—The Administrator shall include an analysis of the methodology received from each SBIR agency in the report required by section 10710(a) of this title.

§ 26311. Termination

The authorization to carry out an SBIR under this chapter terminates on September 30, 2008.

Subchapter II—STTRs

§ 26321. Federal agency STTRs

(a) STTR BUDGET.—With respect to each fiscal year through fiscal year 2009, a Federal agency that has an extramural budget for research or research and development in excess of $1,000,000,000 for the fiscal year shall expend with small business concerns not less than 0.3 percent, specifically in connection with an STTR that meets the requirements of this division (including any policy directive under section 26323 of this title).

(b) LIMITATIONS.—A Federal agency shall not—

(1) use any of its STTR budget established under subsection (a) for the purpose of funding—

(A) administrative costs of the STTR program, including costs associated with salaries and expenses; or

(B) in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than direct or indirect costs allowable under guidelines of the Office of Management and Budget and the Governmentwide Federal Acquisition Regulation issued under section 25(c)(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 421(c)(1))); or

(2) make available for the purpose of meeting the requirements of subsection (a) an amount of its extramural budget for basic research that exceeds the percentage specified in subsection (a).

(c) EXCLUSION OF CERTAIN FUNDING AGREEMENTS.—A funding agreement with a small business concern for research or research and development that results from a competitive or single source selection other than an STTR shall not be considered to meet any portion of the percentage requirement of subsection (a).

§ 26322. Administration of STTRs by Federal agencies

An STTR agency shall—

(1) unilaterally determine categories of projects to be included in its STTR;

(2) issue STTR solicitations in accordance with a schedule determined cooperatively with the Administrator;

(3) unilaterally determine research topics within the Federal agency's STTR solicitations, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by—

(A) the National Critical Technologies Panel in the reports required under section 603 of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6683) (as in effect before January 1, 2001); or

(B) the Secretary of Defense, in the reports required under section 2522 of title 10 (as in effect before February 10, 1996);

(4) unilaterally receive and evaluate proposals resulting from STTR solicitations;

(5)(A) unilaterally select awardees for its STTR funding agreements; and

(B) inform each awardee under a funding agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement;

(6) administer its own STTR funding agreements (or delegate such administration to another Federal agency);

(7)(A) make payments to recipients of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements; and

(B) in all cases, make payment to recipients under funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of the completion of the funding agreement requirements;

(8)(A) include as part of its annual performance plan as required by subsections (a) and (b) of section 1115 of title 31 a section on its STTR; and

(B) submit that section to the Committee on Small Business of the Senate and the Committee on Science and the Committee on Small Business of the House of Representatives;

(9) collect such information from awardees as is necessary to assess STTR outputs and outcomes;

(10) adopt the agreement developed by the Administrator under section 26324 of this title as the STTR agency's model agreement for allocating between small business concerns and research institutions—

(A) intellectual property rights; and

(B) rights, if any, to carry out follow-on research, development, or commercialization;

(11) develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that federally funded research and development centers that participate in STTR agreements—

(A) are free from organizational conflicts of interests relative to the program;

(B) do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(C) use outside peer review, as appropriate;

(12) develop procedures for assessing the commercial merit and feasibility of STTR proposals, as evidenced by—

(A) the small business concern's record of successfully commercializing STTR or other research;

(B) the existence of second phase funding commitments from private sector or non-STTR funding sources;

(C) the existence of third phase follow-on commitments for the subject of the research; and

(D) the presence of other indicators of the commercial potential of the idea;

(13) implement an outreach program to research institutions and small business concerns for the purpose of enhancing its STTR, in conjunction with any such outreach done for purposes of the STTR agency's SBIR;

(14) collect, and maintain in a common format in accordance with section 26344 of this title, such information from awardees as is necessary to assess its STTR, including information necessary to maintain the database under section 26341 of this title;

(15) annually submit to the Administrator and the Office of Science and Technology Policy a report on its STTR; and

(16) provide for and fully implement the tenets of Executive Order No. 13329 (Encouraging Innovation in Manufacturing).

§ 26323. STTR policy directive

(a) ISSUANCE.—The Administrator shall issue a policy directive for the general conduct of the STTRs within the Federal Government.

(b) CONSULTATION.—The STTR policy directive shall be issued after consultation with—

(1) the heads of each of the STTR agencies;

(2) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; and

(3) the Director of the Office of Federal Procurement Policy.

(c) CONTENTS.—The policy directive required by subsection (a) shall provide for—

(1) simplified, standardized, and timely STTR solicitations;

(2) a simplified, standardized funding process that provides for—

(A) the timely receipt and review of proposals;

(B) outside peer review, if appropriate;

(C) protection of proprietary information provided in proposals;

(D) selection of awardees;

(E) retention by a small business concern of the rights to data generated by the small business concern in the performance of an STTR award for a period of not less than 4 years;

(F) continued use by a small business concern, as a directed bailment, of any property transferred by a Federal agency to the small business concern in the second phase of the Federal agency's STTR for a period of not less than 2 years, beginning on the initial date of the small business concern's participation in the third phase of the STTR;

(G) cost sharing;

(H) cost principles and payment schedules; and

(I)(i) one-year awards for the first phase of an STTR, generally not to exceed $100,000, greater or lesser amounts to be awarded at the discretion of the awarding Federal agency, and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project; and

(ii) 2-year awards for the second phase of the STTR, generally not to exceed $750,000, greater or lesser amounts to be awarded at the discretion of the awarding Federal agency, and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project;

(3) minimizing the regulatory burdens associated with participation in an STTR;

(4) guidelines for a model agreement, to be used by all Federal agencies, for allocating between small business concerns and research institutions—

(A) intellectual property rights; and

(B) rights, if any, to carry out follow-on research, development, or commercialization;

(5) procedures to ensure that—

(A) a recipient of an STTR award is a small business concern; and

(B) the small business concern exercises management and control of the performance of the STTR funding agreement under a business plan providing for the commercialization of the technology that is the subject matter of the award; and

(6) procedures to ensure, to the extent practicable, that a Federal agency that intends to pursue research, development, or production of a technology developed by a small business concern under an STTR enters into a follow-on, non-STTR funding agreement with the small business concern for the research, development, or production.

(d) RIGHTS TO DATA.—The rights provided for under subsection (c)(2)(E) shall apply to all Federal funding awards under this division, including first phase, second phase, and third phase awards.

§ 26324. STTR model agreement for intellectual property rights

(a) IN GENERAL.—The Administrator shall promulgate regulations establishing a single model agreement for use in an STTR that allocates between small business concerns and research institutions—

(1) intellectual property rights; and

(2) rights, if any, to carry out follow-on research, development, or commercialization.

(b) OPPORTUNITY FOR COMMENT.—In promulgating regulations under subsection (a), the Administrator shall provide to affected Federal agencies, small business concerns, research institutions, and other interested parties the opportunity to submit written comments.

Subchapter III—Provisions Relating to Both SBIRs and STTRs

§ 26341. Database

(a) PUBLIC DATABASE.—The Administrator shall develop, maintain, and make available to the public a searchable, up-to-date, electronic database that includes—

(1) the name, size, location, and an identifying number assigned by the Administrator of each small business concern that has received a first phase or second phase SBIR or STTR award from a Federal agency;

(2) a description of each first phase or second phase SBIR or STTR award received by that small business concern, including—

(A) an abstract of the project funded by the award, excluding any information identified by the small business concern as proprietary information;

(B) the Federal agency making the award; and

(C) the date and amount of the award;

(3) an identification of any business concern or subsidiary established for the commercial application of a product or service for which an SBIR or STTR award is made;

(4) information regarding mentors and mentoring networks, as required by section 26345(f)(3) of this title; and

(5) with respect to assistance under STTR—

(A) whether the small business concern or the research institution initiated their collaboration on each assisted STTR project;

(B) whether the small business concern or the research institution originated any technology relating to the assisted STTR project;

(C) the length of time it took to negotiate any licensing agreement between the small business concern and the research institution under each assisted STTR project; and

(D) how the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project were allocated (by percentage) between the small business concern and the research institution.

(b) GOVERNMENT DATABASE.—

(1) IN GENERAL.—The Administrator, in consultation with SBIR agencies and STTR agencies, shall develop and maintain a database that—

(A) contains for each second phase award made by a Federal agency—

(i) information collected in accordance with subsection (c) on revenue from the sale of new products or services resulting from the research conducted under the award;

(ii) information collected in accordance with subsection (c) on additional investment from any source, other than first phase or second phase SBIR or STTR awards, to further the research and development conducted under the award; and

(iii) any other information received in connection with the award that the Administrator, in conjunction with the SBIR and STTR managers of Federal agencies, considers relevant and appropriate;

(B) includes any narrative information that a small business concern receiving a second phase award voluntarily submits to further describe the outputs and outcomes of its awards;

(C) includes for each applicant for a first phase or second phase award that does not receive such an award—

(i) the name, size, and location, and an identifying number assigned by the Administration;

(ii) an abstract of the project; and

(iii) the Federal agency to which the application was made; and

(D) includes any other data collected by or available to any Federal agency that the Federal agency considers may be useful for SBIR or STTR evaluation.

(2) USE.—The database under paragraph (1) shall be available for use solely—

(A) for program evaluation purposes by the Federal Government; or

(B) in accordance with policy directives issued by the Administrator, by other authorized persons that are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.

(c) UPDATING OF INFORMATION.—

(1) IN GENERAL.—A small business concern applying for a second phase award under this division shall be required to update information in the database established under this section for any prior second phase award received by that small business concern.

(2) APPORTIONMENT.—In complying with this subsection, a small business concern may apportion sales or additional investment information relating to more than one second phase award among those awards, if the small business concern notes the apportionment for each award.

(3) UPDATES AT TERMINATION.—

(A) IN GENERAL.—A small business concern receiving a second phase award under this division shall update information in the database concerning that award at the termination of the award period.

(B) VOLUNTARY UPDATES.—The Administrator shall request a small business concern described in subparagraph (A) to voluntarily update such information described in subparagraph (A) annually after termination for a period of 5 years.

(d) PROTECTION OF INFORMATION.—Information provided under subsection (b) or (c) shall be considered privileged and confidential and not subject to disclosure under section 552 of title 5.

(e) EFFECT OF INCLUSION OF INFORMATION IN DATABASE.—Inclusion of information in the database under this section shall not be considered to be publication for purposes of subsection (a) or (b) of section 102 of title 35.

§ 26342. Third phase agreements

(a) IN GENERAL.—In the case of a small business concern that is awarded a funding agreement for the second phase of an SBIR or STTR, a Federal agency may enter into a third phase agreement with the small business concern for additional work to be performed during or after the second phase period.

(b) PROCEDURES.—The second phase funding agreement with the small business concern may, at the discretion of the Federal agency awarding the agreement, set out the procedures applicable to third phase agreements with that Federal agency or any other Federal agency.

(c) INTELLECTUAL PROPERTY RIGHTS.—A funding agreement under an SBIR or STTR shall include provisions setting forth the respective rights of the United States and the small business concern with respect to—

(1) intellectual property rights; and

(2) any right to carry out follow-on research.

§ 26343. Inclusion of SBIR and STTR information in strategic plans

Program information relating to SBIRs and STTRs shall be included by a Federal agency in any update or revision required of the Federal agency under section 306(b) of title 5.

§ 26344. Simplified reporting requirements

(a) IN GENERAL.—The Administrator shall work with SBIR agencies and STTR agencies to standardize reporting requirements for the collection of data from SBIR or STTR applicants and awardees, including data for inclusion in the database under section 26341 of this title, taking into consideration the unique needs of each Federal agency, and to the extent possible, permitting the updating of previously reported information by electronic means.

(b) MINIMIZATION OF BURDEN.—The reporting requirements described in subsection (a) shall be designed to minimize the burden on small business concerns.

§ 26345. Federal and State Technology Partnership program

(a) DEFINITIONS.—In this section:

(1) APPLICANT.—The term ''applicant'' means an entity, organization, or individual that submits a proposal for an award or a cooperative agreement under this section.

(2) BUSINESS ADVICE AND COUNSELING.—The term ''business advice and counseling'' means advice and assistance on matters described in subsection (f) to small business concerns to guide small business concerns through the SBIR and STTR process, from application to award and successful completion of each phase of an SBIR or STTR.

(3) FAST PROGRAM.—The term ''FAST program'' means the Federal and State Technology Partnership program established under subsection (b).

(4) MENTOR.—The term ''mentor'' means an individual described in subsection (f).

(5) MENTORING NETWORK.—The term ''mentoring network'' means an association, organization, coalition, or other entity (including an individual) that meets the requirements of subsection (f).

(6) RECIPIENT.—The term ''recipient'' means a person that receives an award or becomes party to a cooperative agreement under this section.

(7) STATE.—The term ''State'' means a State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(b) ESTABLISHMENT OF FAST PROGRAM.—The Administrator shall establish a program to be known as the Federal and State Technology Partnership program or FAST program, the purpose of which shall be to strengthen the technological competitiveness of small business concerns in the States.

(c) GRANTS AND COOPERATIVE AGREEMENTS.—

(1) JOINT REVIEW.—In carrying out the FAST program under this section, the Administrator and the SBIR managers at the National Science Foundation and the Department of Defense shall jointly review proposals submitted by applicants and may make awards or enter into cooperative agreements under this section based on the factors for consideration specified in paragraph (2), to enhance or develop in a State—

(A) technology research and development by small business concerns;

(B) technology transfer from university research to technology-based small business concerns;

(C) technology deployment and diffusion benefiting small business concerns;

(D) the technological capabilities of small business concerns through the establishment or operation of consortia comprised of entities, organizations, or individuals, including—

(i) State and local development agencies and entities;

(ii) representatives of technology-based small business concerns;

(iii) industries and emerging companies;

(iv) universities; and

(v) small business development centers; and

(E) outreach, financial support, and technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR, including initiatives—

(i) to make grants or loans to companies to pay a portion or all of the cost of developing SBIR proposals;

(ii) to establish or operate a mentoring network within the FAST program to provide business advice and counseling that will assist small business concerns that have been identified by FAST program participants, program managers of participating SBIR agencies, the Administrator, or other entities that—

(I) are knowledgeable about the SBIRs and STTRs as good candidates for SBIRs and STTRs; and

(II) would benefit from mentoring, in accordance with subsection (f);

(iii) to create or participate in a training program for individuals providing SBIR outreach and assistance at the State and local levels; and

(iv) to encourage the commercialization of technology developed through SBIR funding.

(2) SELECTION CONSIDERATIONS.—In making awards or entering into cooperative agreements under this section, the Administrator and the SBIR managers at the National Science Foundation and the Department of Defense—

(A) may consider only proposals by applicants that intend to use a portion of the Federal assistance provided under this section to provide outreach, financial support, or technical assistance to technology-based small business concerns participating in or interested in participating in an SBIR; and

(B) shall consider, at a minimum—

(i) whether the applicant has demonstrated that the assistance to be provided would address unmet needs of small busi-

ness concerns in the community, and whether it is important to use Federal funding for the proposed activities;

(ii) whether the applicant has demonstrated that a need exists to increase the number or success of small high-technology businesses in the State, as measured by the number of first phase and second phase SBIR awards that have historically been received by small business concerns in the State;

(iii) whether the projected costs of the proposed activities are reasonable;

(iv) whether the proposal integrates and coordinates the proposed activities with other State and local programs assisting small high-technology firms in the State;

(v) the manner in which the applicant will measure the results of the activities to be conducted; and

(vi) whether the proposal addresses the needs of—

(I) small business concerns owned and controlled by women;

(II) small business concerns owned and controlled by minorities; and

(III) small business concerns located in areas that have historically not participated in the SBIR and STTR programs.

(3) PROPOSAL LIMIT.—Not more than one proposal may be submitted for inclusion in the FAST program under this section to provide services in any one State in any one fiscal year.

(4) PROCESS.—

(A) PROPOSALS AND APPLICATION.—A proposal or application for assistance under this section shall be in such form and subject to such procedures as the Administrator shall establish.

(B) REGULATIONS.—The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations described in paragraph (2)(B).

(d) COOPERATION AND COORDINATION.—In carrying out the FAST program, the Administrator shall cooperate and coordinate with—

(1) SBIR agencies; and

(2) entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns, including—

(A) State and local development agencies and entities;

(B) State committees established under the Experimental Program to Stimulate Competitive Research of the National Science Foundation established under section 113 of the National Science Foundation Act of 1988 (42 U.S.C. 1862g);

(C) State science and technology councils; and

(D) representatives of technology-based small business concerns.

(e) REQUIREMENTS.—

(1) COMPETITIVE BASIS.—An award under this section shall be made or a cooperative agreement under this section shall be entered into on a competitive basis.

(2) MATCHING REQUIREMENTS.—

(A) AMOUNT OF NON-FEDERAL SHARE.—

(i) IN GENERAL.—The non-Federal share of the cost of an activity (other than a planning activity) carried out using an award or under a cooperative agreement under this section shall be—

(I) one-third, in the case of a recipient that will serve small business concerns located in one of the 18 States receiving the fewest SBIR first phase awards;

(II) except as provided in subparagraph (B), one-half, in the case of a recipient that will serve small business concerns located in one of the 16 States receiving the greatest number of SBIR first phase awards; and

(III) except as provided in subparagraph (B), three-sevenths, in the case of a recipient that will serve small business concerns located in a State not described in subclause (I) or (II) that is receiving SBIR first phase awards.

(ii) RANKINGS.—For purposes of clause (i), the Administrator shall reevaluate the ranking of a State once every 2 fiscal years, based on the most recent statistics compiled by the Administrator.

(B) LOW-INCOME AREAS.—To the extent that the Federal contribution to the cost of the activity will be directly allocated by a recipient described in subparagraph (A) to serve small business concerns located in a qualified census tract, the non-Federal share of the cost of an activity carried out using an award or under a cooperative agreement under this section shall be one-third.

(C) TYPES OF FUNDING.—

(i) IN GENERAL.—The non-Federal share of the cost of an activity carried out by a recipient shall be comprised of not

less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions.

(ii) NON-FEDERAL SOURCE.—None of the non-Federal share of costs or contributions may be derived from funds from any other Federal program.

(3) DURATION.—An award may be made or a cooperative agreement may be entered into under this section for multiple years, not to exceed 5 years in total.

(f) MENTORING NETWORKS.—

(1) IN GENERAL.—A recipient of an award or participant in a cooperative agreement under this section may use a reasonable amount of the assistance for the establishment of a mentoring network under this section.

(2) CRITERIA.—A mentoring network established using assistance under this section shall—

(A) provide business advice and counseling to high technology small business concerns located in the State or region served by the mentoring network and identified under subsection (c)(1)(E)(ii) as potential candidates for an SBIR or STTR;

(B) identify volunteer mentors who—

(i) are persons associated with a small business concern that has successfully completed one or more SBIR or STTR funding agreements; and

(ii) have agreed to guide small business concerns through all stages of the SBIR or STTR process, including providing assistance relating to—

(I) proposal writing;

(II) marketing;

(III) Government accounting;

(IV) Government audits;

(V) project facilities and equipment;

(VI) human resources;

(VII) third phase partners;

(VIII) commercialization;

(IX) venture capital networking; and

(X) other matters relevant to the SBIRs and STTRs;

(C) have experience working with small business concerns participating in the SBIRs and STTRs;

(D) contribute information to the national database referred to in paragraph (3); and

(E) agree to reimburse volunteer mentors for out-of-pocket expenses related to service as a mentor under this section.

(3) MENTORING DATABASE.—The Administrator, directly or by contract, shall—

(A) include in the database required by section 26341 of this title, in cooperation with the SBIR program, STTR program, and FAST program, information on mentoring networks and mentors participating under this subsection, including a description of their areas of expertise;

(B) work cooperatively with mentoring networks to maintain and update the database; and

(C) take such action as is necessary to aggressively promote mentoring networks under this subsection.

(g) TERMINATION.—The authority to carry out the FAST program under this section terminates on September 30, 2005.

§ 26346. Second phase and third phase awards for testing and evaluation of products, services, and technologies for use in a technical or weapons system

An award for testing and evaluation of a product, service, or technology for use in a technical or weapons system may be made in the second or third phase of an SBIR or STTR.

§ 26347. Innovation in energy efficiency

(a) FEDERAL AGENCY ENERGY-RELATED PRIORITY.—In carrying out its duties under this division relating to SBIR and STTR solicitations by Federal agencies, the Administrator shall—

(1) ensure that Federal agencies give high priority to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects; and

(2) include in the annual report to Congress under section 10710(a) of this title a determination of whether the priority described in paragraph (1) is being carried out.

(b) CONSULTATION.—The Administrator shall consult with the heads of other Federal agencies in determining whether priority has been given to small business concerns that participate in or conduct energy efficiency or renewable energy system research and development projects, as required by this section.

(c) GUIDELINES.—The Administrator shall, as soon as practicable after December 19, 2007, issue guidelines and directives to assist Federal agencies in meeting the requirements of this section.

DIVISION I—SMALL BUSINESS DEVELOPMENT CENTER PROGRAM

CHAPTER 271—SMALL BUSINESS DEVELOPMENT CENTER PROGRAM

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§ 27101. Definitions

In this chapter:

(1) ASSOCIATE ADMINISTRATOR.—The term ''Associate Administrator'' means the Associate Administrator for Small Business Development Centers.

(2) FINANCIAL ASSISTANCE.—The term ''financial assistance'' means financial assistance under a grant, contract, or cooperative agreement.

(3) FINANCIAL ASSISTANCE AGREEMENT.—The term ''financial assistance agreement'' means a grant agreement, contract, or cooperative agreement under which financial assistance is provided under this chapter.

(4) PROGRAM.—The term ''program'' means the small business development center program under this chapter.

(5) QUALIFIED ENTITY.—The term ''qualified entity'' means—

(A) a public or private institution of higher education (including a land-grant college or university, a college or school of business, engineering, commerce, or agriculture, and a community college or junior college);

(B) a women's business center operating under chapter 273; and

(C) any other entity if the entity, on December 31, 1990, was receiving a grant or was a party to a contract or cooperative agreement under this chapter.

(7) STATE.—The term ''State'' means a State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, and American Samoa.

§ 27102. Financial assistance agreements

(a) IN GENERAL.—Under a program to be known as the small business development center program, the Administrator may provide financial assistance to a qualified entity to assist in establishing a small business development center project for the purpose of providing—

(1) a small business oriented employment or natural resources development program;

(2) studies, research, and counseling concerning the managing, financing, and operation of small business concerns;

(3) management and technical assistance regarding participation by small business concerns in international markets, export promotion, and technology transfer;

(4) delivery or distribution of services and information in connection with an activity described in paragraph (1), (2), or (3); and

(5) providing access to business analysts that can refer small business concerns to available experts.

(b) REQUIREMENTS.—The Administrator shall require an applicant for financial assistance under this chapter with performance commencing on or after January 1, 1992, to—

(1) have its own budget; and

(2) primarily use institutions of higher education and women's business centers operating under chapter 273 to provide services to the small business community.

(c) TERM.—The term of a financial assistance agreement under subsection (a) shall be made on a calendar year basis or to coincide with the Federal fiscal year.

(d) COOPERATION.—A small business development center shall work in close cooperation with the Administration's regional and local offices, the Department of Commerce, appropriate Federal, State, and local agencies and the small business community to serve as an active information dissemination and service delivery mechanism for existing trade promotion, trade finance, trade adjustment, trade remedy, and trade data collection programs of particular utility for small business concerns.

(e) MANAGEMENT.—

(1) IN GENERAL.—The program shall be under the general management and oversight of the Administrator for the delivery of programs and services to the small business community.

(2) PROGRAMS AND SERVICES.—Programs and services referred to in paragraph (1) shall be jointly developed, negotiated, and agreed on, with full participation of a qualified entity and the Administrator,

under an executed financial assistance agreement between the qualified entity and the Administrator.

(f) ASSOCIATION OF SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) IN GENERAL.—Small business development centers may form an Association to pursue matters of common concern.

(2) RECOGNITION; DOCUMENTS.—

(A) IN GENERAL.—If more than a majority of the small business development centers that are operating under agreements with the Administrator are members of an Association formed under paragraph (1), the Administrator shall—

(i) recognize the existence and activities of the Association; and

(ii) consult with the Association and develop documents—

(I) announcing the annual scope of activities under this chapter;

(II) requesting proposals to deliver assistance as provided in this chapter; and

(III) governing the general operations and administration of the program, specifically including the development of regulations and a uniform negotiated financial assistance agreement for use on an annual basis when entering into individual negotiated financial assistance agreements with small business development centers.

(B) INCORPORATION OF CERTAIN PROVISIONS.—In regulations under subparagraph (A)(ii)((III), provisions governing audits, cost principles and administrative requirements for financial assistance that are included in uniform requirements of Office of Management and Budget Circulars shall be incorporated by reference and shall not be set forth in summary or other form.

(3) LEVERAGING OF RESOURCES.—On an annual basis, a small business development center shall review and coordinate public and private partnerships and cosponsorships with the Administrator for the purpose of more efficiently leveraging available resources on a national and a State basis.

(g) FUNDING.—

(1) MATCHING AMOUNT.—

(A) IN GENERAL.—The Administrator shall require as a condition of any financial assistance agreement (or amendment or modification of a financial assistance agreement) made to a qualified entity under this chapter that a matching amount (excluding any fees collected from recipients of such assistance) equal to the

amount of the financial assistance be provided from sources other than the Federal Government, to be comprised of not less than 50 percent cash and not more than 50 percent of indirect costs and in-kind contributions.

(B) RESTRICTION.—The matching amount described in subparagraph (A) shall not include any indirect costs or in-kind contributions derived from any Federal program.

(2) FUNDING FORMULA.—

(A) IN GENERAL.—Subject to subparagraph (C), the total amount of financial assistance received by recipients of financial assistance in a State under this section shall be equal to an amount determined in accordance with the following formula:

(i) PRO RATA BASIS.—The annual amount made available under section 10903(a) of this title for the small business development center program, less any reductions made for expenses authorized by subparagraph (E), shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared with the population of the United States.

(ii) MINIMUM FUNDING LEVEL.—If the pro rata amount calculated under clause (i) for any State is less than the minimum funding level under subparagraph (C), the Administrator shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

(iii) DEDUCTION.—The aggregate amount calculated under clause (ii) shall be deducted from the amount calculated under clause (i) for States eligible to receive more than the minimum funding level. The deductions shall be made on a pro rata basis, based on the population of each such State, as compared with the total population of all such States.

(iv) ADDITION.—The aggregate amount deducted under clause (iii) shall be added to the amount of financial assistance of the States that are not eligible to receive more than the minimum funding level in order to achieve the minimum funding level for each such State, except that the eligible amount of financial assistance to any State shall not be reduced to an amount below the minimum funding level.

(B) DETERMINATION OF AMOUNT OF FINANCIAL ASSISTANCE.—The amount of financial assistance for which a State is eligible to apply under this paragraph shall be the amount determined under subparagraph (A), subject to any modifications required under

subparagraph (C), and shall be based on the amount available for the fiscal year in which performance of the financial assistance agreement commences, but not including amounts distributed in accordance with subparagraph (D). The total amount of financial assistance received by recipients of financial assistance in a State under any provision of this paragraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under paragraph (1).

(C) MINIMUM FUNDING LEVEL.—The amount of the minimum funding level for each State shall be determined for each fiscal year based on the amount made available for that fiscal year to carry out this chapter, as follows:

(i) NOT LESS THAN $81,500,000 AND NOT MORE THAN $90,000,000 MADE AVAILABLE.—If the amount made available is not less than $81,500,000 and not more than $90,000,000, the minimum funding level shall be $500,000.

(ii) LESS THAN $81,500,000 MADE AVAILABLE.—If the amount made available is less than $81,500,000, the minimum funding level shall be the remainder of $500,000 minus a percentage of $500,000 equal to the percentage amount by which the amount made available is less than $81,500,000.

(iii) MORE THAN $90,000,000 MADE AVAILABLE.—If the amount made available is more than $90,000,000, the minimum funding level shall be the sum of $500,000 plus a percentage of $500,000 equal to the percentage amount by which the amount made available exceeds $90,000,000.

(D) DISTRIBUTIONS.—Subject to subparagraph (C), if qualified entities in any State do not apply for, or use the full funding eligibility for the State for a fiscal year, the Administrator shall distribute the remaining funds as follows:

(i) AMOUNT LESS THAN THE AMOUNT RECEIVED IN FISCAL YEAR 2000.—If the amount of financial assistance to any State is less than the amount received by recipients of financial assistance in that State in fiscal year 2000, the Administrator shall distribute the remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared with the total amount of such remaining funds available, to the extent necessary to increase the amount of the financial assistance to the amount received by recipients of financial assistance in that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

(ii) REMAINING AMOUNT.—If any funds remain after application of clause (i), the remaining amount may be distributed as supplemental financial assistance to applicants in any State, as the Administrator determines, in the discretion of the Administrator, to be appropriate, after consultation with the Association.

(E) USE OF AMOUNTS.—

(i) IN GENERAL.—Of the amounts made available in any fiscal year to carry out this chapter—

(I) not more than $500,000 may be used by the Administrator to pay expenses described in paragraphs (2) to (4) of section 10903(a) of this title; and

(II) not more than $500,000 may be used by the Administrator to pay the examination expenses described in section 10903(a)(5) of this title.

(ii) LIMITATION.—No funds described in clause (i) may be used for examination expenses under section 10903(a)(5) of this title if the use would reduce the amount of financial assistance made available under subparagraph (A)(i) to less than $85,000,000 (after excluding any amounts provided in appropriations Acts, or accompanying report language, for specific institutions or for purposes other than the general program) or would further reduce the amount of such financial assistance below that amount.

(F) EXCLUSIONS.—Financial assistance provided to grant recipients in a State by the Administrator or another Federal agency to carry out subsection (j) or section 27104(b)(7) of this title, or for supplemental financial assistance under subparagraph (D)(ii) of this paragraph, shall not be included in the calculation of maximum funding for a State under subparagraph (B) of this paragraph.

(h) PORTABLE ASSISTANCE FOR STARTUP AND SUSTAINABILITY NON-MATCHING FINANCIAL ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—From the funds appropriated under section 10903(h) of this title, the Administrator shall reserve not less than $1,000,000 for each fiscal year to develop portable assistance for start-up and sustainability non-matching financial assistance programs to be conducted by eligible small business development centers in communities that are economically challenged as a result of a business or government facility downsizing or closing that has resulted in the loss of jobs or small business instability.

(2) MAXIMUM AMOUNT.—Non-matching financial assistance under this subsection shall not exceed $100,000.

(3) USE.—Non-matching financial assistance under this subsection shall be used for small business development center personnel expenses and related small business programs and services.

(i) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.—

(1) IN GENERAL.—Subject to paragraph (2), a small business development center may enter into a contract with a Federal agency to provide specific assistance to small business concerns.

(2) CONTRACT PREREQUISITES.—

(A) IN GENERAL.—Before bidding on a contract under paragraph (1), a small business development center shall receive approval from the Associate Administrator of the subject and general scope of the contract.

(B) APPROVAL.—Approval of a contract under paragraph (1) shall be based on a determination that—

(i) the contract will provide assistance to small business concerns; and

(ii) performance of the contract will not hinder the small business development center in carrying out the terms of the financial assistance agreement received by the small business development center from the Administrator.

(3) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under this subsection shall not be subject to the matching funds or eligibility requirements of subsection (g).

(4) NONAPPLICABILITY TO CERTAIN CONTRACTING GOALS.—Notwithstanding any other provision of law, a contract for assistance under this subsection shall not be applied to a Federal agency's contracting goal under section 25106 of this title for small business concerns owned and controlled by socially and economically disadvantaged individuals, small business concerns owned and controlled by women, or other small business concerns.

(j) ADDITIONAL FINANCIAL ASSISTANCE.—

(1) IN GENERAL.—A qualified entity that is funded by the Administrator as a small business development center may apply to the Administrator for additional financial assistance to be used solely to assist, as provided in paragraphs (2) to (7) of section 27104(b), in—

(A) the development and enhancement of exports by small business concerns;

(B) technology transfer; and

(C) outreach, development, and enhancement of minority-owned small business startups or expansions, HUBZone small business concerns, veteran-owned small business startups or expansions, and women-owned small business startups or expansions, in communities affected by base closings or military or corporate downsizing or in rural or underserved communities.

(2) COMPLIANCE REQUIREMENT.—An applicant applying for additional financial assistance under paragraph (1) shall comply with all of the provisions of this chapter, including providing matching funds.

(3) FUNDING.—Funding under this subsection shall be effective for any fiscal year to the extent provided in advance in appropriations Acts.

(4) LIMITATION ON AMOUNT OF GRANT.—No recipient of funds under this subsection shall receive financial assistance that would exceed its pro rata share of a $15,000,000 program based on the populations to be served by the small business development center as compared with the total population of the United States.

(5) MINIMUM STATE ELIGIBILITY AMOUNT.—The minimum amount of eligibility for recipients of financial assistance in any State shall be $100,000.

(6) FINANCIAL ASSISTANCE TO NONPROFIT ENTITIES.—

(A) IN GENERAL.—In a State described in subparagraph (B), the Administrator may provide financial assistance to a nonprofit entity in the State to carry out the activities specified in this subsection.

(B) STATES.—A State referred to in subparagraph (A) is a State in which—

(i) the Administrator has not provided financial assistance under subsection (a); or

(ii) no application for financial assistance has been made by a small business development center under this subsection within 60 days after the later of—

(I) the effective date of a financial assistance agreement under subsection (a) to the small business development center; or

(II) the date on which the Administrator notifies the financial assistance recipient funded under subsection (a) that funds are available for applications for financial assistance under this subsection.

(C) MATCHING FUNDS.—A nonprofit entity that receives financial assistance under this paragraph shall comply with the matching funds requirement of subsection (g).

(D) APPROPRIATIONS.—Financial assistance under this paragraph shall be effective for any fiscal year only to the extent provided in advance in an appropriations Act.

(E) PRO RATA SHARE.—The amount of financial assistance provided under this paragraph in a State shall be limited to the pro rata share provisions of paragraph (4).

(k) PRIVACY REQUIREMENTS.—

(1) IN GENERAL.—A small business development center, consortium of small business development centers, or contractor or agent of a small business development center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this chapter without the consent of the individual or small business concern unless—

(A) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal agency or State agency; or

(B) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center.

(2) LIMITATION.—A disclosure under this paragraph (1)(B) shall be limited to the information necessary for an audit.

(3) USE OF INFORMATION BY THE ADMINISTRATOR.—This chapter does not—

(A) restrict access by the Administrator to program activity data; or

(B) preclude the Administrator from using client information to conduct client surveys.

(4) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall issue regulations to establish standards—

(i) for disclosures with respect to financial audits under paragraph (1)(B); and

(ii) for client surveys under paragraph (3)(B), including standards for oversight of such surveys and for dissemination and use of client information.

(B) MAXIMUM PRIVACY PROTECTION.—Regulations under this paragraph, shall, to the extent practicable, provide for the maximum amount of privacy protection.

(C) INSPECTOR GENERAL.—Until the effective date of regulations under this paragraph, any client survey and the use of such information shall be approved by the Inspector General of the Administration, who shall include such approval in a semiannual report.

§ 27103. Plans

(a) PROVISION OF FINANCIAL ASSISTANCE CONSISTENT WITH AREA PLAN.—Financial assistance shall not be made available to a qualified entity if approving the assistance would be inconsistent with a plan for the area of a State in which service is to be provided that has been adopted by an agency recognized by the State as authorized to adopt an area plan and approved by the Administrator in accordance with standards and requirements established under this chapter.

(b) PLAN.—

(1) IN GENERAL.—A qualified entity may apply to participate in the small business development center program by submitting to the Administrator for approval a plan that—

(A) identifies the entities authorized under this chapter to participate in the small business development center program;

(B) identifies the geographic area to be served;

(C) describes the services that the applicant would provide and the method for delivering the services;

(D) includes a budget; and

(E) includes any other information and assurances that the Administrator may require to ensure that the qualified entity will carry out the activities eligible for assistance.

(2) ACTION BY THE ADMINISTRATOR.—

(A) IN GENERAL.—The Administrator may approve, conditionally approve, or reject a qualified entity plan or combination of plans submitted.

(B) REVIEW.—In all cases, the Administrator shall review a qualified entity plan—

(i) for conformity with an area plan approved under subsection (a); and

(ii) with a view toward providing small business concerns with the most comprehensive and coordinated assistance in the State or part of a State to be served.

(c) ASSISTANCE OUTSIDE THE STATE.—The Administrator may permit a small business development center to provide advice, information, and assistance, as described in section 27104 of this title, to small business concerns located outside the State in which the small business development cen-

ter is located, but only to the extent that the small business concerns are located within close geographical proximity to the small business development center, as determined by the Administrator.

§ 27104. Services

(a) IN GENERAL.—A small business development center shall assist small business concerns in solving problems concerning operations, manufacturing, engineering, technology exchange and development, personnel administration, marketing, sales, merchandising, finance, accounting, business strategy development, and other disciplines required for small business growth and expansion, innovation, increased productivity, and management improvement, and for decreasing industry economic concentrations.

(b) SERVICES TO BE PROVIDED.—Services provided by a small business development center shall include—

(1) furnishing one-to-one individual counseling to small business concerns, including—

(A) working with individuals to increase awareness of basic credit practices and credit requirements;

(B) working with individuals to develop business plans, financial packages, credit applications, and contract proposals;

(C) working with the Administrator to develop and provide informational tools for use in working with individuals on pre-business startup planning, existing business expansion, and export planning; and

(D) working with individuals referred by the local offices of the Administration and participating lenders;

(2) assisting in technology transfer, research and development (including applied research), and coupling from existing sources to small business concerns, including—

(A) working to increase the access of small business concerns to the capabilities of automated flexible manufacturing systems;

(B) working through existing networks and developing new networks for technology transfer that encourage partnership between the small business and academic communities to help commercialize university-based research and development and introduce university-based engineers and scientists to their counterparts in small technology-based firms; and

(C) exploring the viability of developing shared production facilities, under appropriate circumstances;

(3)(A) in cooperation with the Department of Commerce and other relevant Federal agencies, actively assisting small business concerns in exporting by—

(i) identifying and developing potential export markets for small business concerns;

(ii) facilitating export transactions for small business concerns;

(iii) developing linkages between small business concerns and prescreened foreign buyers;

(iv) assisting small business concerns in participating in international trade shows;

(v) assisting small business concerns in obtaining export financing; and

(vi) facilitating the development or reorientation of marketing and production strategies; and

(B) where appropriate, working with the Administrator in cooperation with the State to establish a State international trade center for the purposes described in subparagraph (A);

(4)(A) developing a program in conjunction with the Export-Import Bank of the United States and local and regional Administration offices that will enable the small business development center to serve as an information network and to assist small business concern applicants for financing programs of the Export-Import Bank of the United States; and

(B) otherwise identifying and helping to make available export financing programs to small business concerns;

(5) working closely with the small business community, small business consultants, State agencies, universities, and other appropriate groups to make translation services more readily available to small business concerns doing business, or attempting to develop business, in foreign markets;

(6) cooperating with the Department of Commerce and other relevant Federal agencies to increase access to available export market information systems, including the Commercial Information Management System;

(7) assisting small business concerns in developing and implementing strategic business plans to timely and effectively respond to the planned closure (or reduction) of a Department of Defense facility within the community, or actual or projected reductions in small business concerns' business base due to the actual or projected termination (or reduction) of a Department of Defense program or a contract in support of a Department of Defense program by—

(A) developing broad economic assessments of the adverse impacts of—

(i) the closure (or reduction) of the Department of Defense facility on the small business concerns providing goods or services to the facility or to the military and civilian personnel stationed or working at the facility; and

(ii) the termination (or reduction) of a Department of Defense program (or contracts under a Department of Defense program) on the small business concerns participating in the program as a prime contractor, subcontractor, or supplier at any tier;

(B) developing, in conjunction with appropriate Federal, State, and local governmental entities and private sector organizations, the parameters of a transition adjustment program adaptable to the needs of individual small business concerns;

(C) conducting appropriate programs to inform the affected small business community regarding the anticipated adverse impacts identified under subparagraph (A) and the economic adjustment assistance available to small business concerns; and

(D) assisting small business concerns in developing and implementing an individualized transition business plan;

(8)(A) maintaining current information concerning Federal, State, and local regulations that affect small business concerns and counsel small business concerns on methods of compliance; and

(B) providing counseling and technology development when necessary to help small business concerns find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations;

(9) coordinating and conducting research into technical and general small business problems for which there are no ready solutions;

(10) providing and maintaining a comprehensive library that contains current information and statistical data needed by small business concerns;

(11) maintaining a working relationship and open communications with the financial and investment communities, legal associations, local and regional private consultants, and local and regional small business groups and associates to help address the various needs of the small business community;

(12) conducting in-depth surveys for local small business groups to develop general information regarding the local economy and general small business strengths and weaknesses in the locality;

(13) in cooperation with the Department of Commerce, the Administrator, and relevant Federal agencies, actively assisting rural small business concerns in exporting by—

(A) identifying and developing potential export markets for rural small business concerns;

(B) facilitating export transactions for rural small business concerns;

(C) developing linkages between rural small business concerns and prescreened foreign buyers;

(D) assisting rural small business concerns in participating in international trade shows; and

(E) assisting rural small business concerns in obtaining export financing and developing marketing and production strategies;

(14) assisting rural small business concerns in developing marketing and production strategies that will enable rural small business concerns to better compete in the domestic market;

(15) assisting rural small business concerns by—

(A) providing technical assistance needed by rural small business concerns;

(B) making available managerial assistance to rural small business concerns; and

(C) providing information and assistance in obtaining financing for business startups and expansion;

(16) in conjunction with the United States National Tourism Organization, assist rural small business concerns in developing the tourism potential of rural communities by—

(A) identifying the cultural, historic, recreational, and scenic resources of rural communities;

(B) providing assistance to small business concerns in developing tourism marketing and promotion plans relating to tourism in rural areas; and

(C) assisting small business concerns in obtaining capital for starting or expanding businesses primarily serving tourists;

(17) maintaining lists of local and regional private consultants to whom small business concerns can be referred;

(18) providing information to small business concerns regarding compliance with regulatory requirements;

(19) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 212(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 601 note, Public Law 104–121);

(20) providing small business concern owners with access to a wide variety of export-related information by establishing on-line computer linkages between small business development centers and an international trade data information network with ties to the United States Export Assistance Center program; and

(21) providing information and assistance to small business concerns with respect to establishing drug-free workplace programs on or before October 1, 2006.

(c) UPGRADING AND MODIFICATION OF SERVICES.—A small business development center shall continue to upgrade and modify its services, as needed, in order to meet the changing and evolving needs of the small business community.

(d) LOCATION.—

(1) PROXIMITY OF SERVICE.—A small business development center shall provide service as close as possible to small business concerns by providing extension services and using satellite locations when necessary.

(2) FACILITIES AND STAFF.—The facilities and staff of a small business development center shall be located in such places as to provide maximum accessibility and benefits to the small business concerns that the small business development center is intended to serve.

(e) OTHER PROGRAMS.—To the extent possible, a small business development center shall make full use of other Federal and State government programs that are concerned with aiding small business concerns.

(f) STAFF.—A small business development center shall have a full-time staff, including a full-time director who shall have the authority to make expenditures under the small business development center's budget and who shall manage the program activities.

(g) ACCESS.—A small business development center shall have access to—

(1) business analysts to counsel, assist, and inform small business clients;

(2) technology transfer agents to provide state-of-art technology to small business concerns through coupling with national and regional technology data sources;

(3) information specialists to assist in providing information searches and referrals to small business;

(4) part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises; and

(5) laboratory facilities and adaptive engineering facilities.

(h) USE OF SMALL BUSINESS VENDORS.—A small business development center shall use and compensate as one of its resources qualified vendors

that are small business concerns, including private management consultants, private consulting engineers, and private testing laboratories, to provide services as described in this section to small business concerns on behalf of the small business development center.

(i) COOPERATION IN THE PROVISION OF SERVICES.—In performing the services described in subsection (b), a small business development center shall work in close cooperation with the Administration's regional and local offices, the local small business community, and appropriate State and local agencies.

(j) INFORMATION SHARING SYSTEM.—

(1) IN GENERAL.—The Associate Administrator, in consultation with the small business development centers, shall develop and implement an information sharing system.

(2) FINANCIAL ASSISTANCE.—

(A) IN GENERAL.—Subject to amounts approved in advance in appropriations Acts, the Administrator may provide grants or enter into cooperative agreements to one or more small business development centers to carry out this subsection.

(B) DURATION.—Financial assistance under subparagraph (A) shall be awarded for a period of not more than 5 years.

(C) MATCHING FUNDS.—The matching funds provisions of section 27102 of this title shall not be applicable to a grant or cooperative agreement under subparagraph (A).

(3) FUNCTIONS.—The information sharing system shall—

(A) allow small business development centers participating in the small business development center program to exchange information about their programs; and

(B) provide information central to technology transfer.

§ 27105. Export enhancement plans

(a) IN GENERAL.—Where appropriate, a small business development center shall work in conjunction with the relevant State agency and the Department of Commerce to develop a comprehensive plan for enhancing the export potential of small business concerns located in the State.

(b) STATE OFFICE OF INTERNATIONAL TRADE.—An export enhancement plan may provide for—

(1) the cofunding and staffing of a State office of international trade within a small business development center, using joint Federal and State funding; and

(2) any other appropriate measures directed at improving the export performance of small business concerns in the State.

§ 27106. Assistance from Federal laboratories

(a) IN GENERAL.—A laboratory that is operated and funded by the Federal Government shall cooperate with the Administrator in developing and establishing programs to support small business development centers by—

(1) making facilities and equipment available;

(2) providing experiment station capabilities in adaptive engineering;

(3) providing library and technical information processing capabilities; and

(4) providing professional staff for consulting.

(b) REIMBURSEMENT.—The Administrator may reimburse a laboratory for the provision of services described in subsection (a).

§ 27107. Assistance from the National Science Foundation

The National Science Foundation shall cooperate with the Administrator and with small business development centers in developing and establishing programs to support small business development centers.

§ 27108. Assistance from the National Aeronautics and Space Administration

The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration shall cooperate with small business development centers participating in the small business development center program.

§ 27109. National Small Business Development Center Advisory Board

(a) ESTABLISHMENT.—There is established a National Small Business Development Center Advisory Board (referred to in this section as the ''Board'').

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Board shall consist of 9 members appointed from civilian life by the Administrator.

(2) QUALIFICATIONS.—A member of the Board shall be a person of outstanding qualifications known to be familiar and sympathetic with small business needs and problems.

(3) REPRESENTATION.—Not more than 3 members of the Board shall be from universities or their affiliates, and 6 members shall be from small business concerns or associations representing small business concerns.

(4) TERM.—A member of the Board shall serve a term of 3 years, with one-third of the members changing each year.

(c) CHAIRMAN.—The Board shall elect a chairman.

(d) DUTIES.—The Board shall advise, counsel, and confer with the Associate Administrator in carrying out the duties described in this chapter.

(e) MEETINGS.—The Board shall meet at least semiannually and at the call of the Chairman of the Board.

(f) COMPENSATION.—A member of the Board shall be entitled to be compensated at the rate not in excess of the per diem equivalent of the maximum rate payable under section 5376 of title 5 for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

§ 27110. Small business development center advisory boards

(a) ESTABLISHMENT.—A small business development center shall establish an advisory board.

(b) CHAIRMAN.—A small business development center advisory board shall elect a chairman.

(c) DUTIES.—A small business development center advisory board shall advise, counsel, and confer with the director of the small business development center on all policy matters pertaining to the operation of the small business development center, including the persons that may be eligible to receive assistance from, and how local and regional private consultants may participate with, the small business development center.

§ 27111. Program examination and accreditation

(a) EXAMINATION.—The Administrator shall conduct a biennial programmatic and financial examination of each small business development center.

(b) ACCREDITATION.—The Administrator may provide financial support, by contract or otherwise, to the Association for the purpose of developing a small business development center accreditation program.

(c) EXTENSION OR RENEWAL OF FINANCIAL AGREEMENTS.—

(1) IN GENERAL.—In extending or renewing a financial assistance agreement of a small business development center, the Administrator shall consider the results of the examination and accreditation program conducted under subsections (a) and (b).

(2) ACCREDITATION REQUIREMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Administrator may not renew or extend a financial assistance agreement with a small business development center unless the small business development center has been approved under the accreditation program conducted under this section.

(B) WAIVER.—The Associate Administrator may waive the accreditation requirement on a showing that the small business development center is making a good faith effort to obtain accreditation.

§ 27112. Limitations on authority

(a) APPROPRIATIONS.—The authority to enter into financial assistance agreements under this chapter shall be in effect for a fiscal year only to the extent and in such amounts as are provided in advance in appropriations Acts.

(b) SUSPENSION, TERMINATION, OR FAILURE TO RENEW OR EXTEND FINANCIAL ASSISTANCE AGREEMENT.—After the Administrator enters into a financial assistance agreement with a qualified entity under this chapter, the Administrator shall not suspend, terminate, or fail to renew or extend the financial assistance agreement unless the Administrator provides the qualified entity with written notification stating the reasons for the suspension, termination, or failure to renew or extend and affording the qualified entity an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5.

(c) COMPETITION FOR SUCCESSOR FINANCIAL ASSISTANCE AGREEMENTS.—If a financial assistance agreement with a qualified entity under this chapter is not renewed or extended, any award of a successor financial assistance agreement to another qualified entity under this chapter shall be made on a competitive basis.

(d) NO OTHER FUNDING.—The Administrator shall not fund any small business development center or variation of a small business development center except as authorized by this chapter.

§ 27113. Prohibition of fees for counseling service

A small business development center shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling service under this chapter.

§ 27114. Veterans assistance and services program

(a) IN GENERAL.—A small business development center may apply for a grant under this section to carry out a veterans assistance and services program.

(b) ELEMENTS OF PROGRAM.—Under a program carried out with a grant under this subsection, a small business development center shall—

(1) create a marketing campaign to promote awareness and education of the services of the small business development center that are available to veterans, and to target the campaign toward veterans, service-disabled veterans, military units, Federal agencies, and veterans organizations;

(2) use technology-assisted online counseling and distance learning technology to overcome the impediments to entrepreneurship faced by veterans and members of the Armed Forces; and

(3) increase coordination among organizations that assist veterans, including by establishing virtual integration of service providers and offerings for a one-stop point of contact for veterans who are entrepreneurs or owners of small business concerns.

(c) AMOUNT OF GRANTS.—A grant under this section shall be for not less than $75,000 and not more than $250,000.

(d) FUNDING.—Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter into cooperative agreements to carry out this section.

DIVISION J—WOMEN'S BUSINESS CENTER PROGRAM

CHAPTER 273—WOMEN'S BUSINESS CENTER PROGRAM

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§ 27301. Definitions

In this chapter:

(1) ASSISTANT ADMINISTRATOR.—The term ''Assistant Administrator'' means the Assistant Administrator of the Office of Women's Business Ownership.

(2) PRIVATE NONPROFIT ORGANIZATION.—The term ''private nonprofit organization'' means an entity that is described in section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Code (26 U.S.C. 501(a)).

(3) WOMEN'S BUSINESS CENTER SITE.—The term ''women's business center site'' means the location of—

(A) a women's business center; or

(B) one or more women's business centers, established in conjunction with another women's business center in another location in a State or region—

(i) that reach a distinct population that would otherwise not be served;

(ii) the services of which are targeted to women; and

(iii) the scope, function, and activities of which are similar to those of the primary women's business center or centers in conjunction with which it was established.

§ 27302. Financial assistance

(a) IN GENERAL.—The Administrator may provide financial assistance to a private nonprofit organization to conduct a 5-year project for the benefit of small business concerns owned and controlled by women.

(b) FORMS OF ASSISTANCE.—A project under subsection (a) shall provide—

(1) assistance in matters relating to financing, including training and counseling in—

(A) how to apply for and secure business credit and investment capital;

(B) preparing and presenting financial statements; and

(C) managing cash flow and other financial operations of a business concern;

(2) management assistance, including training and counseling in how to plan, organize, staff, direct, and control each major activity and function of a small business concern; and

(3) marketing assistance, including training and counseling in—

(A) identifying and segmenting domestic and international market opportunities;

(B) preparing and executing marketing plans;

(C) developing pricing strategies;

(D) locating contract opportunities;

(E) negotiating contracts; and

(F) using varying public relations and advertising techniques.

(c) APPROPRIATIONS.—The authority of the Administrator to agree to provide financial assistance shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts.

§ 27303. Conditions of participation

(a) NON-FEDERAL CONTRIBUTIONS.—As a condition of receiving financial assistance under this chapter, a recipient organization shall agree to obtain, after its application has been approved and notice of award has been issued, cash contributions from non-Federal sources as follows:

(1) In the first and second years, one non-Federal dollar for each 2 Federal dollars.

(2) In the third, fourth, and fifth years, one non-Federal dollar for each Federal dollar.

(b) FORM OF NON-FEDERAL CONTRIBUTIONS.—Not more than one-half of the non-Federal sector matching assistance may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

(c) FORM OF FEDERAL CONTRIBUTIONS.—

(1) IN GENERAL.—Financial assistance under this chapter—

(A) may be made by grant, contract, or cooperative agreement; and

(B) may be provided—

(i) in a lump sum or in installments; and

(ii) in advance or by reimbursement.

(2) PARTIAL DISBURSEMENT BEFORE NON-FEDERAL FUNDS ARE OBTAINED.—The Administrator may disburse up to 25 percent of each year's Federal share awarded to a recipient organization after notice of the award has been issued and before the non-Federal sector matching funds are obtained.

(3) FAILURE TO OBTAIN NON-FEDERAL FUNDING.—If a recipient of assistance fails to obtain the required non-Federal contribution during a project—

(A) the recipient shall not be eligible thereafter for advance disbursements—

(i) during the remainder of that project; or

(ii) for any other project for which the recipient is or may be funded by the Administrator; and

(B) before approving assistance to the recipient for any other project, the Administrator shall—

(i) specifically determine whether the Administrator believes that the recipient will be able to obtain the requisite non-Federal funding; and

(ii) make a written finding stating the reasons for making the determination.

§ 27304. Contract authority

(a) IN GENERAL.—A women's business center may enter into a contract with a Federal agency to provide specific assistance to women and other underserved small business concerns.

(b) LIMITATION.—Performance of a contract under subsection (a) should not hinder a women's business center in carrying out the terms of the grant, contract, or cooperative agreement received by the women's business center from the Administrator.

§ 27305. 5-year period

(a) SUBMISSION OF PLAN.—An organization that applies for financial assistance under this chapter initially shall submit a 5-year plan to the Administrator on proposed fundraising and training activities.

(b) ASSISTANCE PERIOD.—An organization may receive financial assistance under this chapter for any one women's business center site for a maximum of 5 years.

§ 27306. Criteria

(a) IN GENERAL.—The Administrator shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance.

(b) AVAILABILITY.—The criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administrator.

(c) CRITERIA INCLUDED.—The criteria shall include—

(1) the experience of the applicant in conducting programs or ongoing efforts designed to impart or upgrade the business skills of women business owners or potential owners;

(2) the present ability of the applicant to commence a project within a minimum amount of time;

(3) the ability of the applicant to provide training and services to a representative number of women who are both socially and economically disadvantaged; and

(4) the location for the women's business center site proposed by the applicant.

§ 27307. Program examination

(a) IN GENERAL.—The Administrator shall—

(1) conduct an annual programmatic and financial examination of each women's business center under which a women's business center shall provide to the Administrator—

(A) an itemized cost breakdown of actual expenditures for costs incurred during the preceding year; and

(B)(i) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the women's business center during the preceding year to meet the requirements of section 27303 of this title; and

(ii) with respect to any in-kind contributions described in section 27303(b) of this title that were used to satisfy the requirements of section 27303 of this title, verification of the existence and valuation of those contributions; and

(2) analyze the results of each such examination and, based on that analysis, make a determination regarding the programmatic and financial viability of each women's business center.

(b) CONDITIONS FOR CONTINUED FUNDING.—In determining whether to award a sustainability grant or renew financial assistance to a women's business center, the Administrator—

(1) shall consider the results of the most recent examination of the women's business center under subsection (a); and

(2) may withhold the award or renewal if the Administration determines that—

(A)(i) the women's business center has failed to provide any information required to be provided under subparagraph (A) or (B) of subsection (a)(1); or

(ii) the information provided by the women's business center is inadequate; or

(B)(i) the women's business center has failed to provide any information required to be provided by the women's business center for purposes of the report of the Administrator under section 10711 of this title; or

(ii) the information provided by the women's business center is inadequate.

§ 27308. Suspension, termination, or failure to renew or extend financial assistance

After the Administrator agrees to provide financial assistance to an applicant under this chapter, the Administrator shall not suspend, terminate, or fail to renew or extend the financial assistance unless the Administrator—

(1) provides the applicant with written notification stating the reasons for suspension, termination, or failure to renew or extend; and

(2) affords the applicant an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5.

§ 27309. Continued funding for women's business centers

(a) IN GENERAL.—A nonprofit organization described in subsection (b) shall be eligible to receive, subject to subsection (c), a 3-year grant under this subsection.

(b) APPLICABILITY.—A nonprofit organization described in this subsection is a nonprofit organization that has received funding under section 27302 of this title.

(c) APPLICATION AND APPROVAL CRITERIA.—

(1) CRITERIA.—Subject to paragraph (2), the Administrator shall develop and publish criteria for the consideration and approval of applications by nonprofit organizations under this section.

(2) CONTENTS.—Except as otherwise provided in this section, the conditions for participation in the grant program under this section shall be the same as the conditions for participation in the program

under section 29(l) of the Small Business Act (15 U.S.C. 656(*l*)) (as in effect on May 25, 2007).

(3) NOTIFICATION.—Not later than 60 days after the date of the deadline to submit applications for each fiscal year, the Administrator shall approve or deny any application under this section and notify the applicant for each such application.

(d) AWARD OF GRANTS.—

(1) IN GENERAL.—Subject to the availability of appropriations, the Administrator shall make a grant for the Federal share of the cost of activities described in the application to each applicant approved under this section.

(2) AMOUNT.—A grant under this section shall be for not more than $150,000 for each year of the grant.

(3) FEDERAL SHARE.—The Federal share of the cost of activities funded under this section shall be not more than 50 percent.

(4) PRIORITY.—In allocating funds made available for grants under this chapter, the Administrator shall give applications under this section priority over first-time applications under 27302 of this title.

(e) RENEWAL.—

(1) IN GENERAL.—The Administrator may renew a grant under this section for additional 3-year periods, if the nonprofit organization submits an application for renewal at such time, in such manner, and accompanied by such information as the Administrator may establish.

(2) UNLIMITED RENEWALS.—There shall be no limitation on the number of times that a grant may be renewed under paragraph (1).

§ 27310. Privacy requirements

(a) IN GENERAL.—A women's business center may not disclose the name, address, or telephone number of any individual or small business concern receiving assistance under this chapter without the consent of the individual or small business concern, unless—

(1) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal agency or State agency; or

(2) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a women's business center, but a disclosure under this paragraph shall be limited to the information necessary for the audit.

(b) USE OF INFORMATION BY THE ADMINISTRATOR.—This section does not—

(1) restrict access by the Administrator to program activity data; or

(2) preclude the Administrator from using client information (other than the information described in paragraph (1)) to conduct client surveys.

(c) REGULATIONS.—The Administrator shall issue regulations to establish standards for requiring disclosures during a financial audit under subsection (a)(2).

§ 27311. Expedited acquisition

Notwithstanding any other provision of law, the Administrator, acting through the Assistant Administrator, may use such expedited acquisition methods as the Administrator determines to be appropriate to carry out this chapter, except that the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit proposals.

DIVISION K—VETERANS AND RESERVISTS

CHAPTER 275—VETERANS AND RESERVISTS

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§ 27501. Definitions

In this chapter:

(1) ASSOCIATE ADMINISTRATOR.—The term ''Associate Administrator'' means the Associate Administrator for Veterans Business Development under section 10304(b) of this title.

(2) ADVISORY COMMITTEE.—The term ''Advisory Committee'' means the Veterans Business Development Advisory Committee established under section 27503.

(3) CORPORATION.—The term ''Corporation'' means the National Veterans Business Development Corporation established under section 27514.

(4) INTERAGENCY TASK FORCE.—The term ''Interagency Task Force'' means the veterans business development interagency task force established under section 27502.

§ 27502. Veterans business development interagency task force

(a) ESTABLISHMENT.—The President shall establish an interagency task force to coordinate the efforts of Federal agencies necessary to improve capital and business development opportunities for, and ensure achievement of the pre-established Federal contracting goals for, small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans.

(b) MEMBERSHIP.—The members of the Interagency Task Force shall include—

(1) the Administrator, who shall serve as chairperson of the Interagency Task Force;

(2) a senior level representative from—

(A) the Department of Veterans Affairs;

(B) the Department of Defense;

(C) the Administration (in addition to the Administrator);

(D) the Department of Labor;

(E) the Department of the Treasury;

(F) the General Services Administration;

(G) the Office of Management and Budget; and

(3) 4 representatives from a veterans service organization or military organization or association, selected by the President.

(c) DUTIES.—The Interagency Task Force shall—

(1) consult regularly with veterans service organizations and military organizations in performing the duties of the Interagency Task Force; and

(2) coordinate administrative and regulatory activities and develop proposals relating to—

(A) improving capital access and capacity of small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through loans, surety bonding, and franchising;

(B) ensuring achievement of the pre-established Federal contracting goals for small business concerns owned and controlled by service-disabled veterans and small business concerns owned and controlled by veterans through expanded mentor-protégé assistance and matching such small business concerns with contracting opportunities;

(C) increasing the integrity of certifications of status as a small business concern owned and controlled by service-disabled veterans or a small business concern owned and controlled by veterans;

(D) reducing paperwork and administrative burdens on veterans in accessing business development and entrepreneurship opportunities;

(E) increasing and improving training and counseling services provided to small business concerns owned and controlled by veterans; and

(F) making other improvements relating to the support for veterans business development by the Federal Government.

§ 27503. Advisory Committee on Veterans Business Affairs

(a) IN GENERAL.—There is established an advisory committee to be known as the Advisory Committee on Veterans Business Affairs, which shall serve as an independent source of advice and policy recommendations to—

(1) the Administrator;

(2) the Associate Administrator;

(3) Congress;

(4) the President; and

(5) other United States policymakers.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Committee shall be composed of 15 members appointed by the Administrator, of whom—

(A) 8 shall be veterans who are owners of small business concerns; and

(B) 7 shall be representatives of veterans organizations.

(2) POLITICAL AFFILIATION.—Not more than 8 members of the Committee shall be of the same political party as the President.

(3) PROHIBITION OF FEDERAL EMPLOYMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no member of the Advisory Committee may serve as an officer or employee of the United States.

(B) EXCEPTION.—A member of the Advisory Committee who accepts a position as an officer or employee of the United States after the date of the member's appointment to the Advisory Committee may continue to serve on the Advisory Committee for not more than 30 days after accepting the position.

(4) TERM OF SERVICE.—THE TERM OF SERVICE OF A MEMBER OF THE ADVISORY COMMITTEE SHALL BE 3 YEARS.

(5) VACANCIES.—The Administrator shall fill any vacancies on the membership of the Advisory Committee not later than 30 days after the date on which the vacancy occurs.

(6) CHAIRPERSON.—

(A) IN GENERAL.—The members of the Advisory Committee shall elect one of the members to be Chairperson of the Advisory Committee.

(B) VACANCIES IN OFFICE OF CHAIRPERSON.—Any vacancy in the office of the Chairperson of the Advisory Committee shall be filled by the Advisory Committee at the first meeting of the Advisory Committee following the date on which the vacancy occurs.

(c) DUTIES.—The duties of the Advisory Committee shall be to—

(1) review, coordinate, and monitor plans and programs, developed in the public and private sectors, that affect the ability of small business concerns owned and controlled by veterans to obtain capital and credit and to access markets;

(2) promote the collection of business information and survey data as they relate to veterans and small business concerns owned and controlled by veterans;

(3) monitor and promote plans, programs, and operations of Federal agencies that may contribute to the formation and growth of small business concerns owned and controlled by veterans;

(4) develop and promote initiatives, policies, programs, and plans designed to foster small business concerns owned and controlled by veterans; and

(5) in cooperation with the Corporation, develop a comprehensive plan, to be updated annually, for joint public-private sector efforts to facilitate growth and development of small business concerns owned and controlled by veterans.

(d) POWERS.—

(1) HEARINGS.—Subject to subsection (e), the Advisory Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Advisory Committee considers advisable to carry out its duties.

(2) INFORMATION FROM FEDERAL AGENCIES.—On request of the Chairperson of the Advisory Committee, the head of any Federal agency or the Government Accountability Office shall furnish such information to the Advisory Committee as the Advisory Committee considers to be necessary to carry out its duties.

(3) USE OF MAILS.—The Advisory Committee may use the United States mails in the same manner and under the same conditions as other Federal agencies.

(4) GIFTS.—The Advisory Committee may accept, use, and dispose of gifts or donations of services or property.

(e) MEETINGS.—

(1) IN GENERAL.—The Advisory Committee shall meet, not less than 3 times per year, at the call of the Chairperson or at the request of the Administrator.

(2) LOCATION.—Each meeting of the full Advisory Committee shall be held at the headquarters of the Small Business Administration in Washington, District of Columbia. The Administrator shall provide suitable meeting facilities and such administrative support as is necessary for each full meeting of the Advisory Committee.

(3) TASK GROUPS.—The Advisory Committee may from time to time establish temporary task groups as may be necessary in order to carry out the duties of the Advisory Committee.

(f) COMPENSATION AND EXPENSES.—

(1) NO COMPENSATION.—Members of the Advisory Committee shall serve without compensation for their service to the Advisory Committee.

(2) EXPENSES.—The members of the Advisory Committee shall be reimbursed for travel and subsistence expenses in accordance with section 5703 of title 5.

(g) REPORT.—Not later than 30 days after the end of each fiscal year, the Committee shall submit to Congress and the President a report describing the activities of the Advisory Committee and any recommendations developed by the Advisory Committee for the promotion of small business concerns owned and controlled by veterans.

§ 27504. Participation in transition assistance program workshops

(a) IN GENERAL.—The Associate Administrator shall increase veteran outreach by ensuring that veteran business outreach centers regularly participate, on a nationwide basis, in the workshops of the transition assistance program of the Department of Labor.

(b) PRESENTATIONS.—In carrying out subsection (a), a veteran business outreach center may provide grants to entities located in transition assistance program locations to make presentations on the opportunities available from the Administrator for recently separating or separated veterans. A presentation under this subsection shall include, at a minimum, a description of the entrepreneurial and business training resources available from the Administrator.

(c) WRITTEN MATERIALS.—The Associate Administrator shall—

(1) create written materials that provide comprehensive information on self-employment and veterans entrepreneurship, including information on resources available from the Administrator on such topics; and

(2) make the materials created under paragraph (1) available to the Secretary of Labor for inclusion in the transition assistance program manual.

(d) REPORTS.—The Associate Administrator shall submit to Congress progress reports on the implementation of this section.

§ 27505. Women veterans business training

The Associate Administrator shall—

(1) compile information on existing resources available to women veterans for business training, including resources for—

(A) vocational and technical education;

(B) general business skills, such as marketing and accounting; and

(C) business assistance programs targeted to women veterans; and

(2) disseminate the information compiled under paragraph (1) through veteran business outreach centers and women's business centers.

§ 27506. Information collection

(a) IDENTIFICATION.—The Secretary of Veterans Affairs, in consultation with the Assistant Secretary for Veterans' Employment and Training and the Administrator, shall engage in efforts each year to identify small business concerns owned and controlled by disabled veterans in the United States.

(b) PROVISION OF INFORMATION.—The Secretary of Veterans Affairs shall inform each small business concern identified under this section that information on Federal procurement is available from the Administrator.

§ 27507. Entrepreneurial training, counseling, and management assistance

The Administrator shall take such actions as are necessary to ensure that small business concerns owned and controlled by disabled veterans have access to programs established under this subtitle that provide entrepreneurial training, business development assistance, counseling, and management assistance to small business concerns, including, among others, the small business development center program and the SCORE program.

§ 27508. Outreach

(a) IN GENERAL.—The Administrator, the Secretary of Veterans Affairs, and the Assistant Secretary of Labor for Veterans' Employment and Training shall develop and implement a program of comprehensive outreach to assist disabled veterans.

(b) ACTIVITIES.—The program under subsection (a) shall include business training and management assistance, employment and relocation coun-

seling, and dissemination of information on veterans' benefits and veterans' entitlements.

§ 27509. Memorandum of understanding with the SCORE

(a) IN GENERAL.—The Administrator shall enter into a memorandum of understanding with SCORE to provide for—

(1) the appointment by SCORE in its national office of an individual to act as National Veterans Business Coordinator, whose duties shall relate exclusively to veterans business matters, and who shall be responsible for the establishment and administration of a program to coordinate counseling and training regarding entrepreneurship to veterans through the chapters of SCORE throughout the United States;

(2) the provision of assistance by SCORE in maintaining a toll-free telephone number and an internet website to provide access for veterans to information about the counseling and training regarding entrepreneurship available to veterans through SCORE; and

(3) the collection of statistics concerning services provided by SCORE to service-disabled veterans and other veterans for inclusion in each annual report published by the Administrator under section 10713 of this title.

(b) RESOURCES.—The Administrator shall provide SCORE such resources as the Administrator determines to be necessary for SCORE to carry out the requirements of the memorandum of understanding specified under subsection (a).

§ 27510. Memorandum of understanding with the Secretary of Veterans Affairs and the Association

(a) IN GENERAL.—The Secretary of Veterans Affairs, the Administrator, and the head of the Association shall enter into a memorandum of understanding with respect to entrepreneurial assistance to service-disabled veterans and other veterans through small business development centers and facilities of the Department of Veterans Affairs.

(b) FORMS OF ASSISTANCE.—Assistance provided under the memorandum of understanding shall include—

(1) conducting of studies and research, and the distribution of information generated by such studies and research, on the formation, management, financing, marketing, and operation of small business concerns by veterans;

(2) provision of training and counseling to veterans concerning the formation, management, financing, marketing, and operation of small business concerns;

(3) provision of management and technical assistance to the owners and operators of small business concerns regarding international markets, the promotion of exports, and the transfer of technology;

(4) provision of assistance and information to veterans regarding procurement opportunities with Federal, State, and local agencies, especially such agencies funded in whole or in part with Federal funds;

(5) establishment of an information clearinghouse to collect and distribute information, including by electronic means, on the assistance programs of Federal, State, and local governments, and of the private sector, including information on office locations, key personnel, telephone numbers, mail and electronic addresses, and contracting and subcontracting opportunities;

(6) provision of internet or other distance learning academic instruction for veterans in business subjects, including accounting, marketing, and business fundamentals; and

(7) compilation of a list of small business concerns owned and controlled by service-disabled veterans that provide products or services that could be procured by the United States, and delivery of the list to each Federal agency.

(c) LIST OF SMALL BUSINESS CONCERNS.—The list described in subsection (b)(7)—

(1) shall be delivered in hard copy and electronic form; and

(2) shall include the name and address of each small business concern owned and controlled by service-disabled veterans and the products or services that it provides.

§ 27511. Dissemination of information

Each fiscal year, the Secretary of Veterans Affairs shall—

(1) in consultation with the Assistant Secretary of Labor for Veterans' Employment and Training and the Administrator, identify small business concerns owned and controlled by veterans in the United States; and

(2) inform each small business concern owned and controlled by veterans identified under paragraph (1) that information on Federal procurement is available from the Administrator, as provided in section 24115(b) of this title.

§ 27512. Memorandum of understanding with the Secretary of Labor and the Secretary of Veterans Affairs

(a) IN GENERAL.—The Secretary of Labor, the Secretary of Veterans Affairs, and the Administrator shall enter into a memorandum of understanding to provide for coordination of vocational rehabilitation services, technical and managerial assistance, and financial assistance to veterans (including

service-disabled veterans) seeking to employ themselves by forming or expanding small business concerns.

(b) CONTENTS.—The memorandum of understanding shall include recommendations for expanding existing programs or establishing new programs to provide services described in subsection (a) or assistance to veterans (including service-disabled veterans).

§ 27513. Data collection

The Federal Procurement Data System described in section 6(d)(4)(A) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)(4)(A)) shall collect data regarding the percentage and dollar value of prime contracts and subcontracts awarded to small business concerns owned and controlled by veterans (including small business concerns owned and controlled by service-disabled veterans).

§ 27514. National Veterans Business Development Corporation

(a) DEFINITIONS.—In this section:

(1) ADVISORY BOARD.—The term ''Advisory Board'' means the Professional Certification Advisory Board established under subsection (i).

(2) BOARD OF DIRECTORS.—The term ''Board of Directors'' means the board of directors of the Corporation.

(3) CORPORATION.—The term ''Corporation'' means the National Veterans Business Development Corporation established by subsection (b).

(b) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a federally chartered corporation to be known as the National Veterans Business Development Corporation, which shall be incorporated under the laws of the District of Columbia and which shall have the powers granted in this section.

(2) STATUS.—Notwithstanding any other provision of law, the Corporation is a private entity and not an agency, instrumentality, authority, entity, or establishment of the United States Government.

(c) PURPOSES OF THE CORPORATION.—The purposes of the Corporation shall be—

(1) to expand the provision of and improve access to technical assistance regarding entrepreneurship for the Nation's veterans; and

(2) to assist veterans with the formation and expansion of small business concerns by working with and organizing public and private resources, including those of—

(A) the Administration;

(B) the Department of Veterans Affairs, Department of Labor, Department of Commerce, and Department of Defense;

(C) SCORE;

(D) small business development centers; and

(E) the business development staffs of each Federal agency.

(d) BOARD OF DIRECTORS.—

(1) IN GENERAL.—The management of the Corporation shall be vested in a Board of Directors composed of 9 voting members and 3 nonvoting ex officio members.

(2) APPOINTMENT OF VOTING MEMBERS.—The President shall, after considering recommendations proposed by the Chairmen and Ranking Members of the Committee on Small Business and Entrepreneurship and Committee on Veterans Affairs of the Senate and the Committee on Small Business and Committee on Veterans Affairs of the House of Representatives, appoint United States citizens to be voting members of the Board of Directors, not more than 5 of whom shall be members of the same political party.

(3) EX OFFICIO MEMBERS.—The Administrator, the Secretary of Defense, and the Secretary of Veterans Affairs shall serve as the nonvoting ex officio members of the Board of Directors.

(4) CHAIRPERSON.—The voting members of the Board of Directors shall elect one such member to serve as chairperson of the Board of Directors for a term of 2 years.

(5) TERMS OF VOTING MEMBERS.—

(A) IN GENERAL.—A voting member of the Board of Directors shall serve a term of 6 years.

(B) UNEXPIRED TERMS.—A member of the Board of Directors appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed only for the remainder of the term. A member may serve after the expiration of that member's term until a successor takes office.

(6) VACANCIES.—A vacancy on the Board of Directors shall be filled in the manner in which the original appointment was made. In the case of a vacancy in the office of the Administrator or the Secretary of Veterans Affairs, and pending the appointment of a successor, an acting appointee for the vacancy may serve as an ex officio member.

(7) INELIGIBILITY FOR OTHER OFFICES.—No voting member of the Board of Directors may be an officer or employee of the United States while serving as a member of the Board of Directors or during the 2-year period preceding that service.

(8) FAIRNESS, IMPARTIALITY, AND NONDISCRIMINATION.—The Board of Directors shall administer the affairs of the Corporation fairly, impartially, and without discrimination.

(9) OBLIGATIONS AND EXPENSES.—The Board of Directors shall prescribe the manner in which the obligations of the Corporation may be incurred and in which its expenses shall be allowed and paid.

(10) QUORUM.—Five voting members of the Board of Directors shall constitute a quorum, but a lesser number may hold hearings.

(e) CORPORATE POWERS.—The Corporation shall have the authority—

(1) to adopt and use a corporate seal;

(2) to have succession until dissolved by Act of Congress;

(3) to make contracts or grants;

(4) to sue and be sued and to file and defend against lawsuits in Federal or State court;

(5) to appoint, through the actions of the Board of Directors, officers and employees of the Corporation, to define their duties and responsibilities and fix their compensation, and to dismiss at will such officers or employees;

(6) to prescribe, through the actions of the Board of Directors, bylaws not inconsistent with Federal law and the law of the District of Columbia, regulating the manner in which its general business may be conducted and the manner in which the privileges granted to it by law may be exercised;

(7) to exercise, through the actions of the Board of Directors or duly authorized officers, all powers specifically granted by this section, and such incidental powers as are necessary;

(8) to solicit, receive, and disburse funds from private, Federal, State, and local organizations;

(9) to accept and employ or dispose of in furtherance of the purposes of this section any money or property, real, personal, or mixed, tangible or intangible, received by gift, devise, bequest, or otherwise;

(10) to accept voluntary and uncompensated services; and

(11) to use the United States mails in the same manner and under the same conditions as the Federal agencies.

(f) CORPORATE FUNDS.—

(1) DEPOSIT OF FUNDS.—The Board of Directors shall deposit all funds of the Corporation in federally chartered and insured depository institutions until the funds are disbursed under paragraph (2).

(2) DISBURSEMENT OF FUNDS.—Funds of the Corporation may be disbursed only for purposes that—

(A) are approved by the Board of Directors by a recorded vote with a quorum present; and

(B) are in accordance with the purposes of the Corporation as specified in subsection (c).

(g) NETWORK OF INFORMATION AND ASSISTANCE CENTERS.—In carrying out the purposes of the Corporation specified in subsection (c), the Corporation shall establish and maintain a network of information and assistance centers for use by veterans and the public.

(h) PROFESSIONAL CERTIFICATION ADVISORY BOARD.—

(1) IN GENERAL.—Acting through the Board of Directors, the Corporation shall establish a Professional Certification Advisory Board to create uniform guidelines and standards for the professional certification of members of the Armed Services to aid in their efficient and orderly transition to civilian occupations and professions and to remove potential barriers in the areas of licensure and certification.

(2) MEMBERSHIP.—

(A) IN GENERAL.—The members of the Advisory Board—

(i) shall serve without compensation;

(ii) shall meet in the District of Columbia not less than quarterly; and

(iii) shall be appointed by the Board of Directors as provided in subparagraphs (B) and (C).

(B) PRIVATE SECTOR MEMBERS.—The Board of Directors shall appoint not fewer than 7 members for terms of 2 years to represent private sector organizations and associations, including the American Association of Community Colleges, the Society for Human Resource Managers, the Coalition for Professional Certification, the Council on Licensure and Enforcement, and the American Legion.

(C) PUBLIC SECTOR MEMBERS.—The Board of Directors shall—

(i) invite public sector members to serve at the discretion of Federal agencies;

(ii) encourage the participation of the Under Secretary of Defense for Personnel and Readiness;

(iii) encourage the participation of two officers from each branch of the Armed Forces to represent the Training Commands of their branch; and

(iv) seek the participation and guidance of the Assistant Secretary of Labor for Veterans' Employment and Training.

(i) ANNUAL REPORTS.—On or before October 1 of each year, the Board of Directors shall submit to the President and Congress a report that—

(1) describes the activities and accomplishments of the Corporation for the preceding year;

(2) includes the Corporation's findings regarding the efforts of Federal, State, and private organizations to assist veterans in the formation and expansion of small business concerns; and

(3) includes any recommendations by the Corporation for the promotion of small business concerns owned and controlled by veterans.

§ 27515. Relief from time limitations

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

(1) is owned and controlled by—

(A) a veteran who was called or ordered to active duty on or after September 11, 2001, under a provision of law specified in section 101(a)(13)(B) of title 10; or

(B) a service-disabled veteran who became such a veteran due to an injury or illness incurred or aggravated in the active military, naval, or air service during a period of active duty pursuant to a call or order to active duty on or after September 11, 2001, under a provision of law specified in section 101(a)(13)(B) of title 10; and

(2) was subject to the time limitation during that period of active duty.

(b) DURATION.—On submission of proper documentation to the Administrator, the extension of a time limitation under subsection (a) shall be equal to the period of time that the veteran who owned or controlled a small business concern was on active duty as described in subsection (a).

(c) EXCEPTION FOR PROGRAMS SUBJECT TO FEDERAL CREDIT REFORM ACT OF 1990.—Subsections (a) and (b) do not apply to any program subject to the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.).

DIVISION X—MISCELLANEOUS

CHAPTER 291—MISCELLANEOUS

Sec.
51101. Management assistance for small business concerns affected by military operations.
51102. Business grants and cooperative agreements.
51103. Voluntary agreements and programs.
51104. Paul D. Coverdell drug-free workplace program.

§ 29101. Management assistance for small business concerns affected by military operations

(a) DEFINITION OF PERIOD OF MILITARY CONFLICT.—In this section, the term ''period of military conflict'' means—

(1) a period of war declared by Congress;

(2) a period of national emergency declared by Congress or by the President; or

(3) a period of a contingency operation (as defined in section 101(a) of title 10).

(b) ASSISTANCE.—The Administrator shall use, as appropriate, the entrepreneurial development and management assistance programs of the Administration, including programs involving State or private sector partners, to provide business counseling and training to any small business concern adversely affected by the deployment of units of the Armed Forces of the United States in support of a period of military conflict.

§ 29102. Business grants and cooperative agreements

(a) IN GENERAL.—The Administrator may make grants to and enter into cooperative agreements with a coalition of private or public entities (or combination of private and public entities)—

(1) to expand business-to-business relationships between small business concerns and large business concerns; and

(2) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protégé programs or community-based, statewide, or local business development programs.

(b) MATCHING REQUIREMENT.—The Administrator may make a grant to a coalition of private entities under subsection (a) only if the coalition provides for activities described in paragraph (1) or (2) of subsection (a) in an amount (in kind or in cash) equal to the grant amount.

§ 29103. Voluntary agreements and programs

(a) CONSULTATION.—The President may consult with representatives of small business concerns with a view to encouraging the making by small business concerns with the approval of the President of voluntary agreements and programs to further the objectives of this subtitle.

(b) EXEMPTION FROM CERTAIN LAWS.—

(1) IN GENERAL.—No act or omission to act pursuant to this subtitle that occurs while this subtitle is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) and determined by the President to be in the public interest as contributing to the national defense, shall be construed

to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act (15 U.S.C. 41 et seq.).

(2) REQUESTS.—A copy of a request intended to be within the coverage of this section, and any modification or withdrawal of such a request—

(A) shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made; and

(B) shall be published in the Federal Register unless publication of the request would, in the opinion of the President, endanger the national security.

(c) DELEGATION OF AUTHORITY.—The authority granted in subsection (b) shall be delegated only—

(1) to an official who for the purpose of the delegation shall be required to be appointed by the President by and with the advice and consent of the Senate;

(2) on the condition that the official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than 10 days before making any request or finding under subsection (b); and

(3) on the condition that the official obtain the approval of the Attorney General to any request under subsection (b) before making the request.

(d) WITHDRAWAL OF REQUEST OR FINDING BY THE PRESIDENT OR OF APPROVAL BY THE ATTORNEY GENERAL.—On withdrawal of any request or finding under this section, or on withdrawal by the Attorney General of approval of the voluntary agreement or program on which the request or finding is based, this section shall not apply to any subsequent act, or omission to act, by reason of the finding or request.

§ 29104. Paul D. Coverdell drug-free workplace program

(a) DEFINITIONS.—In this section:

(1) DRUG-FREE WORKPLACE PROGRAM.—The term ''drug-free workplace program'' means a program that includes—

(A) a written policy, including a clear statement of—

(i) expectations for workplace behavior;

(ii) prohibitions against reporting to work or working under the influence of illegal drugs or alcohol;

(iii) prohibitions against the use or possession of illegal drugs in the workplace; and

(iv) the consequences of violating those expectations and prohibitions;

(B)(i) drug and alcohol abuse prevention training for a total of not less than 2 hours for each employee; and

(ii) additional voluntary drug and alcohol abuse prevention training for employees who are parents;

(C)(i) testing of employees of a small business concern for illegal drugs, with analysis conducted by a drug testing laboratory certified by the Substance Abuse and Mental Health Services Administration, or approved by the College of American Pathologists for forensic drug testing; and

(ii) a review of each positive test result by a medical review officer who is not—

(I) an employee of that small business concern; or

(II) an employee or agent of, or any person having a financial interest in, the laboratory for which the illegal drug test results are reviewed;

(D) employee access to an employee assistance program, including confidential assessment, referral, and short-term problem resolution; and

(E) continuing alcohol and drug abuse prevention education.

(2) ELIGIBLE INTERMEDIARY.—The term ''eligible intermediary'' means an organization—

(A) that has not less than 2 years of experience in carrying out drug-free workplace programs;

(B) that has a drug-free workplace policy in effect;

(C) that is located in a State, the District of Columbia, or a territory of the United States; and

(D)(i) the purpose of which is—

(I) to develop comprehensive drug-free workplace programs or to supply drug-free workplace services; or

(II) to provide other forms of assistance and services to small business concerns; or

(ii) that is eligible to receive a grant under chapter 2 of the National Narcotics Leadership Act of 1988 (21 U.S.C. 1521 et seq.).

(3) EMPLOYEE.—The term ''employee'' includes—

(A) an applicant for employment;

(B) an employee;

(C) a supervisor;

(D) a manager;

(E) an officer of a small business concern who is active in management of the small business concern; and

(F) an owner of a small business concern who is active in management of the small business concern.

(4) MEDICAL REVIEW OFFICER.—The term ''medical review officer'' means a licensed physician with knowledge of substance abuse disorders.

(b) ESTABLISHMENT.—

(1) IN GENERAL.—There is established a drug-free workplace demonstration program, under which the Administrator may make grants to, or enter into cooperative agreements or contracts with, eligible intermediaries for the purpose of providing financial and technical assistance to small business concerns seeking to establish a drug-free workplace program.

(2) ADDITIONAL GRANTS FOR TECHNICAL ASSISTANCE.—In addition to grants under paragraph (1), the Administrator may make grants to, or enter into cooperative agreements or contracts with, any grantee for the purpose of providing, in cooperation with one or more small business development centers, technical assistance to small business concerns seeking to establish a drug-free workplace program.

(3) 2-YEAR GRANTS.—A grant made under this subsection shall be for a period of 2 years, subject to an annual performance review by the Administrator.

(c) PROMOTION OF EFFECTIVE PRACTICES OF ELIGIBLE INTERMEDIARIES.—

(1) TECHNICAL ASSISTANCE AND INFORMATION.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and information to each eligible intermediary under subsection (b) regarding the most effective practices in establishing and carrying out drug-free workplace programs.

(2) EVALUATION OF PROGRAM.—

(A) DATA COLLECTION AND ANALYSIS.—

(i) IN GENERAL.—An eligible intermediary receiving a grant under this section shall establish a system to collect and analyze information regarding the effectiveness of drug-free workplace programs established with assistance provided under this section through the intermediary, including information regarding any increase or decrease among employees in drug use, awareness of the adverse consequences of drug use, and absenteeism, injury, and disciplinary problems related to drug use.

(ii) REQUIREMENTS.—The system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe.

(iii) LIMITATION.—Not more than 5 percent of the amount of a grant made under subsection (b) shall be used by the eligible intermediary to carry out this paragraph.

(B) METHOD OF EVALUATION.—

(i) IN GENERAL.—The Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, shall provide technical assistance and guidance to each eligible intermediary receiving a grant under subsection (b) regarding the collection and analysis of information to evaluate the effectiveness of drug-free workplace programs established with assistance provided under this section, including the information referred to in paragraph (1).

(ii) FORMS OF ASSISTANCE.—Assistance under clause (i) shall include—

(I) the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the small business concern's employees; and

(II) the identification of methods suitable for analyzing such information.

(d) CONTRACT AUTHORITY.—In carrying out this section, the Administrator may—

(1) contract with public and private entities to provide assistance related to carrying out the program under this section; and

(2) compensate those entities for provision of that assistance.

(e) EFFECT OF SECTION.—Nothing in this section requires an employer that attends a program offered by an eligible intermediary to contract for any service offered by the eligible intermediary.

Subtitle III—Investment Division

DIVISION A—GENERAL PROVISIONS

CHAPTER 301—GENERAL PROVISIONS

Sec.
30101. Definitions.
30102. Implementation of subtitle.

§ 30101. Definitions

In this subtitle:

(1) ARTICLES.—The term ''articles''—

(A) with respect to an incorporated body, means the articles of incorporation if the incorporated body; and

(B) with respect to any other business entity, means the functional equivalent of the articles of incorporation of an incorporated body or other similar documents specified by the Administrator.

(2) EMPLOYEE WELFARE BENEFIT PLAN.—

(A) IN GENERAL.—The term ''employee welfare benefit plan'' has the meaning given the term in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).

(B) INCLUSIONS.—The term ''employee welfare benefit plan'' includes any similar plan not covered by the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.) that has been established and that is maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees.

(3) ENERGY SAVING DEBENTURE.—The term ''energy saving debenture'' means a deferred interest debenture that—

(A) is issued at a discount;

(B) has a 5-year maturity or a 10-year maturity;

(C) requires no interest payment or annual charge for the first 5 years;

(D) is restricted to energy saving qualified investments; and

(E) is issued at no cost (as defined in section 502 of the Credit Reform Act of 1990 (2 U.S.C. 661a)) with respect to purchasing and guaranteeing the debenture.

(4) ENERGY SAVING QUALIFIED INVESTMENT.—The term ''energy saving qualified investment'' means an investment in a small business concern that is primarily engaged in researching, manufacturing, developing, or providing products, goods, or services that reduce the use or consumption of nonrenewable energy resources.

(5) LEVERAGE.—The term ''leverage'' includes—

(A) a debenture purchased or guaranteed by the Administrator;

(B) a participating security purchased or guaranteed by the Administrator; and

(C) a preferred security outstanding as of October 1, 1995.

(6) LICENSE.—The term ''license'' means a license to operate as a small business investment company issued by the Administrator to a company under section 30302 of this title.

(7) LICENSEE.—

(A) IN GENERAL.—The term ''licensee'' means a company that is issued a license.

(B) INCLUSION.—The term ''licensee'' includes a specialized small business investment company.

(8) LIMITED LIABILITY COMPANY.—The term ''limited liability company'' means a business entity that is organized and operating in accordance with a State limited liability company statute approved by the Administrator.

(9) LONG-TERM.—The term ''long-term'', used in connection with equity capital or loan funds invested in a small business concern or smaller enterprise, means a period of time of not less than one year.

(10) LOW-INCOME GEOGRAPHIC AREA.—The term ''low-income geographic area'' means—

(A) a population census tract (or in the case of an area that is not tracted for population census tracts, the equivalent county division, as defined by the Bureau of the Census of the Department of Commerce for purposes of defining poverty areas), if—

(i) the poverty rate for the population census tract is not less than 20 percent;

(ii)(I) in the case of a population census tract that is located within a metropolitan area, 50 percent or more of the households in the population census tract have an income equal to less than 60 percent of the area median gross income; or

(II) in the case of a population census tract that is not located within a metropolitan area, the median household income for the census tract does not exceed 80 percent of the statewide median household income; or

(iii) as determined by the Administrator based on objective criteria, a substantial population of low-income individuals reside, an inadequate access to investment capital exists, or other indications of economic distress exist in the population census tract; or

(B) an area located within—

(i) a HUBZone;

(ii) an urban empowerment zone or urban enterprise community (as designated by the Secretary of Housing and Urban Development); or

(iii) a rural empowerment zone or rural enterprise community (as designated by the Secretary of Agriculture).

(11) MANAGEMENT OFFICIAL.—The term ''management official'' means an officer, director, general partner, manager, employee, agent,

or other participant in the management or conduct of the affairs of a licensee.

(12) MEMBER.—The term ''member'', with respect to a licensee that is a limited liability company, means—

(A) a holder of an ownership interest in the limited liability company; or

(B) a person otherwise admitted to membership in the limited liability company.

(13) PARTICIPATING SECURITY.—The term ''participating security'' includes—

(A) preferred stock, a preferred limited partnership interest, or a similar instrument; and

(B) a debenture under the terms of which interest is payable only to the extent of earnings.

(14) PENSION PLAN.—

(A) IN GENERAL.—The term ''pension plan'' has the meaning given the term in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002).

(B) INCLUSIONS.—The term ''pension plan'' includes—

(i) a public or private pension or retirement plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.); and

(ii) any similar plan not covered by that Act that is established and maintained by the Federal Government or any State or political subdivision, or any agency or instrumentality thereof, for the benefit of employees.

(15) PRIVATE CAPITAL.—

(A) IN GENERAL.—The term ''private capital'' means the sum of—

(i)(I) the paid-in capital and paid-in surplus of a corporate licensee;

(II) the contributed capital of the partners of a partnership licensee; or

(III) the equity investment of the members of a limited liability company licensee; and

(ii) subject to subparagraph (B), unfunded binding commitments, from investors that meet criteria established by the Administrator, to contribute capital to the licensee.

(B) LIMITATION.—An unfunded commitment described in subparagraph (A)(ii) may be counted as private capital for purposes

of approval by the Administrator of a request for leverage, but leverage shall not be funded based on such a commitment.

(C) EXCLUSIONS.—The term ''private capital'' does not include—

(i) funds borrowed by a licensee from any source;

(ii) funds obtained through the issuance of leverage; or

(iii) funds obtained directly or indirectly from a Federal, State, or local government, or any government agency or instrumentality, except for—

(I) funds obtained from the business revenues (excluding any governmental appropriation) of a federally chartered or government-sponsored corporation established before October 1, 1987;

(II) funds invested by an employee welfare benefit plan or pension plan; and

(III) qualified nonprivate funds (if the investors of the qualified nonprivate funds do not control, directly or indirectly, the management, board of directors, general partners, or members of the licensee).

(16) QUALIFIED HUBZONE SMALL BUSINESS CONCERN.—The term ''qualified HUBZone small business concern'' has the meaning given the term in section 10101 of this title, except that the exception stated in paragraph (18)(B) of this section applies.

(17) QUALIFIED NONPRIVATE FUNDS.—The term ''qualified nonprivate funds'' means—

(A) funds directly or indirectly invested in an applicant or licensee on or before August 16, 1982, by any Federal agency, other than the Administration, under a provision of law that explicitly requires the inclusion of such funds in the definition of the term ''private capital'';

(B) funds directly or indirectly invested in an applicant or licensee by a Federal agency under a provision of law enacted after September 4, 1992, that explicitly requires the inclusion of those funds in the definition of the term ''private capital''; and

(C) funds invested in an applicant or licensee by one or more State or local government entities (including any guarantee extended by such an entity) in an aggregate amount that does not exceed 33 percent of the private capital of the applicant or licensee.

(18) SMALL BUSINESS CONCERN.—

(A) IN GENERAL.—The term ''small business concern'' has the meaning given the term in section 10101 of this title, except as provided in subparagraph (B).

(B) EXCEPTION.—For purposes of this subtitle, in determining whether a business concern is a small business concern—

(i) an investment by a venture capital firm, investment company (including a small business investment company), employee welfare benefit plan, pension plan, trust, foundation, or endowment that is exempt from Federal income taxation—

(I) shall not cause a business concern to be considered not independently owned and operated regardless of the allocation of control during the investment period under any investment agreement between the business concern and the entity making the investment;

(II) shall be disregarded in determining whether a business concern satisfies size standards established under section 10101(70) of this title; and

(III) shall be disregarded in determining whether a small business concern is a smaller enterprise; and

(ii) in determining whether a business concern satisfies net income standards established under section 10101(70) of this title, if the business concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the business concern, the net income of the business concern shall be determined by allowing a deduction in an amount equal to the sum of—

(I) if the business concern is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this subparagraph), multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would apply if the business concern were a corporation; and

(II) the net income (so determined) less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would apply if the business concern were a corporation.

(19) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SERVICE-DISABLED VETERANS.—The term ''small business concern

owned and controlled by service-disabled veterans'' has the meaning given the term in section 10101 of this title, except that the exception stated in paragraph (18)(B) of this section applies.

(20) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS.—The term ''small business concern owned and controlled by socially and economically disadvantaged individuals'' has the meaning given the term in section 10101 of this title, except that the exception stated in paragraph (18)(B) of this section applies.

(21) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY VETERANS.—The term ''small business concern owned and controlled by veterans'' has the meaning given the term in section 10101 of this title, except that the exception stated in paragraph (18)(B) of this section applies.

(22) SMALL BUSINESS INVESTMENT COMPANY.—The term ''small business investment company'' means a licensee.

(23) SMALLER ENTERPRISE.—

(A) IN GENERAL.—The term ''smaller enterprise'' means a small business concern that, together with its affiliates—

(i) has—

(I) a net financial worth of not more than $6,000,000, as of the date on which assistance is provided under this subtitle to that small business concern; and

(II) an average net income, for the 2-year period preceding the date on which assistance is provided under this subtitle to that small business concern, of not more than $2,000,000, after Federal income taxes (excluding any carryover losses); or

(ii) satisfies the North American Industry Classification System size standards established by the Administrator for the industry in which the small business concern is primarily engaged.

(B) DETERMINATION OF NET INCOME.—For purposes of subparagraph (A)(i)(II), if a small business concern is not required by law to pay Federal income tax at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the small business concern, the net income of the small business concern shall be determined by deducting from the gross income of the small business concern—

(i) in the case of a small business concern that is required by law to pay State (and local, if any) income taxes at the enterprise level, the amount that is equal to the net income of the small business concern determined without regard to this clause, multiplied by the marginal Federal income tax rate that would apply if the small business concern were a corporation; or

(ii) in the case of a small business concern that is not required by law to pay State (and local, if any) income taxes at the enterprise level, the amount that is equal to the sum of—

(I) the net income of the small business concern determined without regard to this clause, multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would apply if the small business concern were a corporation; and

(II) the net income of the small business concern determined without regard to this clause, less any deduction for State (and local) income taxes calculated under subclause (I), multiplied by the marginal Federal income tax rate that would apply if the business concern were a corporation.

(24) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANY.—The term ''specialized small business investment company'' means a company that—

(A) invests solely in small business concerns that contribute to a well-balanced national economy by facilitating ownership in small business concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages;

(B) is organized or chartered under a State business or nonprofit corporations statute or formed as a limited partnership; and

(C) was licensed under subsection (d) of section 301 of the Small Business Act (15 U.S.C. 681(d)), as in effect before September 30, 1996.

(25) STATE.—The term ''State'' includes a State, the territories and possessions of the United States, Puerto Rico, and the District of Columbia.

(26) THIRD PARTY DEBT.—The term ''third party debt'' means any indebtedness for borrowed money, other than indebtedness owed to the Administrator.

§ 30102. Implementation of subtitle

The Administrator—

(1) shall carry out this subtitle so as to improve and stimulate the national economy in general and the small business segment of the economy in particular by establishing a program to stimulate and supplement the flow of private equity capital and long-term loan funds that—

(A) small business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization; and

(B) are not available in adequate supply; and

(2) in doing so—

(A) shall ensure the maximum participation of private financing sources;

(B) shall ensure that any financial assistance provided under this subtitle does not result in a substantial increase of unemployment in any area of the country; and

(C) in the award of financial assistance under this subtitle, when practicable, shall accord priority to small business concerns that lease or purchase equipment and supplies produced in the United States and encourage small business concerns that receive assistance under this subtitle to continue to lease or purchase equipment and supplies produced in the United States.

DIVISION B—INVESTMENT PROGRAMS

CHAPTER 303—SMALL BUSINESS INVESTMENT COMPANY PROGRAM

Sec.
30301. Requirements for licensing.
30302. Licensing procedure.
30303. Financial institution investments.
30304. Borrowing power.
30305. Equity capital for small business concerns.
30306. Long-term loans to small business concerns.
30307. Limitation on amount of financing.
30308. Cooperation with banks and other investors or lenders.
30309. Advisory services; Federal Reserve Banks as depositories or fiscal agents; investment of funds.
30310. Nonliability of the United States.
30311. Certifications of eligibility.
30312. Interest rates.
30313. Conflicts of interest.
30314. Ineligibility of guaranteed obligations for purchase by Federal Financing Bank.
30315. Trust certificates.
30316. Regulations.

30317. Unlawful acts and omissions.
30318. Investigations; examinations; valuations.
30319. Revocation and suspension of licenses; cease and desist orders.
30320. Removal or suspension of, or prohibition of participation by, management officials.
30321. Direct civil enforcement actions.
30322. Jurisdiction; service of process.

§ 30301. Requirements for licensing

(a) IN GENERAL.—To receive or hold a license to operate as a small business investment company under this chapter, a company shall meet the requirements of this section.

(b) ORGANIZATION.—The company shall be an incorporated body, limited liability company, or limited partnership organized and chartered or otherwise existing under State law solely for the purpose of performing the functions and conducting the activities contemplated under this chapter.

(c) SUCCESSION.—The company—

(1) if it is an incorporated body, shall have succession for a period of not less than 30 years unless it is sooner dissolved by its shareholders; and

(2) if it is a limited partnership, shall have succession for a period of not less than 10 years.

(d) POWERS.—The company shall possess the powers reasonably necessary to perform the functions and conducting the activities contemplated under this chapter.

(e) AREA OF OPERATION.—The area in which the company is to conduct its operations, and the establishment of branch offices or agencies (if authorized by the articles), shall be subject to the approval of the Administrator.

(f) ARTICLES.—

(1) IN GENERAL.—The articles of the company shall specify in general terms—

(A) the purposes for which the company is formed;

(B) the name of the company;

(C) the area or areas in which its operations are to be carried on;

(D) the place where its principal office is to be located; and

(E) the amount and classes of its shares of capital stock.

(2) OTHER PROVISIONS.—The articles of the company may contain any other provisions not inconsistent with this chapter that the company may see fit to adopt for the regulation of its business and the conduct of its affairs.

(3) APPROVAL.—The articles of the company and any amendments to the articles adopted from time to time shall be subject to the approval of the Administrator.

(g) CAPITAL REQUIREMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the private capital of the company shall be not less than—

(A) $5,000,000; or

(B) $10,000,000, with respect to a company that seeks authority to issue participating securities to be purchased or guaranteed by the Administrator under this chapter.

(2) EXCEPTIONS.—

(A) NO UNREASONABLE RISK OF DEFAULT OR LOSS.—

(i) IN GENERAL.—The Administrator may, on a showing of special circumstances and good cause, permit the private capital of a company described in paragraph (1)(B) to be less than $10,000,000, but not less than $5,000,000, if the Administrator determines that doing so would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(ii) COMPANIES LICENSED BEFORE SEPTEMBER 30, 1996.—The Administrator may continue the licensing of a licensee licensed under subsection (c) or (d) of section 301 of the Small Business Act (15 U.S.C. 681(c), (d)) before September 30, 1996, that does not meet the requirements of paragraph (1) if—

(I) the licensee certifies in writing that not less than 50 percent of the aggregate dollar amount of its financings will be provided to smaller enterprises; and

(II) the Administrator determines that doing so would not create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(B) VIABLE BUSINESS PLAN AND REASONABLE TIMETABLE.—

(i) IN GENERAL.—Notwithstanding any other provision of this chapter, the Administrator may, on a showing of special circumstances and good cause, issue a license with respect to a company that would otherwise be issued a license, except that the company does not satisfy the requirements of paragraph (1), if the company—

(I) has private capital of not less than $3,000,000; and

(II) has a viable business plan reasonably projecting profitable operations and a reasonable timetable for achieving a level of private capital that satisfies the requirements of paragraph (1).

(ii) LEVERAGE.—A company that is licensed pursuant to the exception provided in clause (i) shall not be eligible to receive leverage as a licensee until the company satisfies the requirements of paragraph (1).

(3) ADEQUACY.—In addition to the requirements of paragraph (1), the Administrator shall—

(A) determine whether the private capital of the company is adequate to ensure a reasonable prospect that the company will be operated soundly and profitably and managed actively and prudently in accordance with its articles;

(B) determine that the company, both prior to licensing and prior to approving any request for financing, will be able to make periodic payments on any debt of the company that is interest-bearing; and

(C) take into consideration—

(i) the income that the company anticipates on its contemplated investments;

(ii) the experience of the company's owners and managers;

(iii) the history of the company as an entity, if any; and

(iv) the company's financial resources.

(h) DIVERSIFICATION OF OWNERSHIP.—The Administrator shall ensure that the management of a licensee licensed after September 30, 1996, is sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.

§ 30302. Licensing procedure

(a) SUBMISSION OF APPLICATION.—An applicant for a license to operate as a small business investment company under this chapter shall submit to the Administrator an application, in such form and including such documentation as the Administrator may prescribe.

(b) STATUS.—Not later than 90 days after receipt by the Administrator of an application under this section, the Administrator shall provide the applicant with a written report detailing the status of the application and any requirements remaining for completion of the application.

(c) APPROVAL OR DISAPPROVAL.—Within a reasonable time after receiving a completed application submitted in accordance with this section (including such requirements as the Administrator may prescribe by regulation), the Administrator shall—

(1) approve the application and issue a license to the applicant if the requirements of this section are satisfied; or

(2) disapprove the application and notify the applicant in writing of the disapproval.

(d) MATTERS TO BE CONSIDERED.—In reviewing and processing an application under this section, the Administrator—

(1) shall determine whether—

(A) the applicant meets the requirements of subsections (g) and (h) of section 30301 of this title; and

(B) the management of the applicant is qualified and has the knowledge, experience, and capability necessary to comply with this chapter;

(2) shall take into consideration—

(A) the need for and availability of financing for small business concerns in the geographic area in which the applicant is to commence business;

(B) the general business reputation of the owners and management of the applicant; and

(C) the probability of successful operations of the applicant, including adequate profitability and financial soundness; and

(3) shall not take into consideration any projected shortage or unavailability of leverage.

(e) FEES.—

(1) IN GENERAL.—The Administrator may prescribe fees to be paid by an applicant for a license.

(2) USE OF AMOUNTS.—Fees collected under this subsection—

(A) shall be deposited in the account for salaries and expenses of the Administration; and

(B) are authorized to be appropriated solely to cover the costs of licensing examinations.

§ 30303. Financial institution investments

(a) CERTAIN BANKS.—Notwithstanding section 23A of the Federal Reserve Act (12 U.S.C. 371c), a national bank, or a member bank of the Federal Reserve System or nonmember insured bank to the extent permitted under applicable State law, may invest in one or more licensees, or in an entity established to invest solely in licensees, except that in no event shall the total amount of such investments of any such bank exceed 5 percent of the capital and surplus of the bank.

(b) FEDERAL SAVINGS ASSOCIATIONS.—Notwithstanding any other provision of law, a Federal savings association may invest in one or more licensees, or in an entity established to invest solely in licensees, except that in no event shall the total amount of such investments by a Federal savings

association exceed 5 percent of the capital and surplus of the Federal savings association.

§ 30304. Borrowing power

(a) AUTHORITY TO ISSUE OBLIGATIONS.—A licensee shall have authority to borrow money and to issue its securities, promissory notes, or other obligations under such general conditions and subject to such limitations and regulations as the Administrator may prescribe.

(b) DEBENTURES AND PARTICIPATING SECURITIES.—

(1) AUTHORITY TO PURCHASE OR GUARANTEE.—To encourage the formation and growth of small business investment companies, the Administrator may, when authorized in an appropriation Act, purchase, or guarantee the timely payment of all principal and interest as scheduled on, debentures or participating securities issued by a licensee.

(2) TERMS AND CONDITIONS.—A purchase or guarantee under paragraph (1) may be made on such terms and conditions as the Administrator considers appropriate, under regulations prescribed by the Administrator.

(3) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee under this subsection.

(4) DEBENTURES.—

(A) SUBORDINATION.—A debenture purchased or guaranteed by the Administrator under this subsection shall be subordinate to any other debenture bond, promissory note, or other debt or obligation of a licensee, unless the Administrator, in the exercise of reasonable investment prudence and in consideration of the financial soundness of the licensee, determines otherwise.

(B) TERM; INTEREST.—A debenture purchased or guaranteed by the Administrator under this subsection—

(i) may be issued for a term of not to exceed 15 years; and

(ii) shall bear interest at a rate not less than—

(I) a 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 on such debentures, adjusted to the nearest 0.125 percent; plus

(II) in the case of a debenture obligated after September 30, 2001, an additional charge in an amount established annually by the Administrator as necessary to re-

duce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing debentures under this chapter, which amount—

(aa) may not exceed 1.38 percent per year; and

(bb) which shall be paid to and retained by the Administrator.

(5) OTHER TERMS AND CONDITIONS.—A debenture or participating security purchased or guaranteed under this subsection shall also contain such other terms as the Administrator may determine.

(6) TOTAL AMOUNT.—The total amount of debentures and participating securities of a licensee that may be guaranteed by the Administrator and outstanding shall not exceed 300 percent of the private capital of the licensee.

(7) MAXIMUM LEVERAGE.—

(A) IN GENERAL.—The maximum amount of outstanding leverage made available to a licensee shall be determined by the amount of the licensee's private capital as follows:

(i) If the company has private capital of not more than $15,000,000, the total amount of leverage shall not exceed 300 percent of the amount of the licensee's private capital.

(ii) If the licensee has private capital of more than $15,000,000 but not more than $30,000,000, the total amount of leverage shall not exceed—

(I) $45,000,000; plus

(II) 200 percent of the amount of private capital over $15,000,000.

(iii) If the company has private capital of more than $30,000,000, the total amount of leverage shall not exceed—

(I) $75,000,000; plus

(II) the lesser of—

(aa) 100 percent of the amount of private capital over $30,000,000; or

(bb) $15,000,000.

(B) ADJUSTMENTS.—The dollar amounts in clauses (i), (ii), and (iii) of subparagraph (A) shall be adjusted annually to reflect increases in the Consumer Price Index established by the Bureau of Labor Statistics of the Department of Labor.

(C) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In calculating the outstanding leverage of a licensee for the purposes of subparagraph (A), the Administrator shall not include the

amount of the cost basis of any equity investment made by the licensee in a smaller enterprise located in a low-income geographic area, to the extent that the total of such amounts does not exceed 50 percent of the licensee's private capital.

(D) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

(i) IN GENERAL.—Subject to clause (ii), in calculating the outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any energy saving qualified investment in a smaller enterprise made in fiscal year 2009 or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) LIMITATIONS.—

(I) AMOUNT OF EXCLUSION.—The amount excluded under clause (i) for a company shall not exceed 33 percent of the private capital of the company.

(II) MAXIMUM INVESTMENT.—A company shall not make an energy saving qualified investment in any one entity in an amount equal to more than 20 percent of the private capital of the company.

(III) OTHER TERMS.—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as defined in section 502 of the Credit Reform Act of 1990 (2 U.S.C. 661a)) with respect to purchasing or guaranteeing any debenture involved.

(8) AUTHORITY TO HAVE OUTSTANDING BOTH GUARANTEED DEBENTURES AND GUARANTEED PARTICIPATING SECURITIES.—Subject to the dollar and percentage limits stated in paragraphs (6) and (7), a licensee may issue and have outstanding both guaranteed debentures and guaranteed participating securities so long as the total amount of participating securities outstanding does not exceed 200 percent of the amount of the licensee's private capital.

(9) MAXIMUM AGGREGATE AMOUNT OF LEVERAGE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the aggregate amount of outstanding leverage issued to any licensee or licensees that are commonly controlled (as determined by the Administrator) shall not exceed $90,000,000, as adjusted annually for increases in the Consumer Price Index.

(B) EXCEPTIONS.—The Administrator may, on a case-by-case basis—

(i) approve an amount of leverage that exceeds the amount described in subparagraph (A) for licensees under common control; and

(ii) impose such additional terms and conditions as the Administrator determines to be appropriate to minimize the risk of loss to the Administration in the event of default.

(C) APPLICABILITY OF OTHER PROVISIONS.—Any leverage that is issued to a licensee or licensees commonly controlled in an amount that exceeds $90,000,000, whether as a result of an increase in the Consumer Price Index or a decision of the Administrator, is subject to subsection (d).

(D) INVESTMENTS IN LOW-INCOME GEOGRAPHIC AREAS.—In calculating the aggregate outstanding leverage of a licensee for purposes of subparagraph (A), the Administrator shall not include the amount of the cost basis of any equity investment made by the licensee in a smaller enterprise located in a low-income geographic area, to the extent that the total of such amounts does not exceed 50 percent of the amount of the licensee's private capital.

(E) INVESTMENTS IN ENERGY SAVING SMALL BUSINESSES.—

(i) IN GENERAL.—Subject to clause (ii), in calculating the aggregate outstanding leverage of a company for purposes of subparagraph (A), the Administrator shall exclude the amount of the cost basis of any energy saving qualified investment in a smaller enterprise made in fiscal year 2009 or any fiscal year thereafter by a company licensed in the applicable fiscal year.

(ii) LIMITATIONS.—

(I) AMOUNT OF EXCLUSION.—The amount excluded under clause (i) for a company shall not exceed 33 percent of the private capital of the company.

(II) MAXIMUM INVESTMENT.—A company shall not make an energy saving qualified investment in any one entity in an amount equal to more than 20 percent of the private capital of the company.

(III) OTHER TERMS.—The exclusion of amounts under clause (i) shall be subject to such terms as the Administrator may impose to ensure that there is no cost (as defined in section 502 of the Credit Reform Act of 1990 (2 U.S.C. 661a)) with respect to purchasing or guaranteeing any debenture involved.

(c) THIRD PARTY DEBT.—The Administrator—

(1) shall not permit a licensee having outstanding leverage to incur third party debt that would create or contribute to an unreasonable risk of default or loss to the Federal Government; and

(2) shall permit a licensee having outstanding leverage to incur third party debt only on such terms and subject to such conditions as the Administrator may establish by regulation or otherwise.

(d) REQUIRED CERTIFICATIONS.—

(1) IN GENERAL.—The Administrator shall require a licensee, as a condition of approval of an application for leverage, to certify in writing—

(A) in the case of a licensee with leverage less than or equal to $90,000,000, that not less than 20 percent of the licensee's aggregate dollar amount of financings will be provided to smaller enterprises; and

(B) in the case of a licensee with leverage in excess of $90,000,000, that, in addition to satisfying the requirements of subparagraph (A), 100 percent of the licensee's aggregate dollar amount of financings made in whole or in part with leverage in excess of $90,000,000 will be provided to smaller enterprises.

(2) LICENSEES UNDER COMMON CONTROL.—Licensees under common control (as determined by the Administrator) shall be considered to be a single licensee for purposes of determining both the applicability of and compliance with the investment percentage requirements of this subsection.

(e) CAPITAL IMPAIRMENT.—

(1) IN GENERAL.—Before approving an application for leverage submitted by a licensee, the Administrator—

(A) shall determine that the private capital of the licensee meets the requirements of section 30301(g) of this title; and

(B) shall determine (taking into account the nature of the assets of the licensee, the amount and terms of any third party debt owed by the licensee, and any other factors determined to be relevant by the Administrator) that the private capital of the licensee has not been impaired to such an extent that the issuance of additional leverage would create or otherwise contribute to an unreasonable risk of default or loss to the Federal Government.

(2) UNIFORM APPLICABILITY.—Any regulation issued by the Administrator to implement this subsection that applies to any licensee with outstanding leverage obtained before the effective date of the regulation

shall apply uniformly to all licensees with outstanding leverage obtained before that effective date.

(f) REDEMPTION OR REPURCHASE OF PREFERRED STOCK.—Notwithstanding any other provision of law—

(1) the Administrator may allow the issuer of any preferred stock sold to the Administrator before November 1, 1989, to redeem or repurchase the stock, on payment to the Administrator of an amount less than the par value of the stock, for a repurchase price determined by the Administrator after consideration of all relevant factors, including—

(A) the market value of the stock;

(B) the value of benefits provided and anticipated to accrue to the issuer;

(C) the amount of dividends paid, accrued, and anticipated; and

(D) the estimate of the Administrator of any anticipated redemption; and

(2) any amounts received by the Administrator from the repurchase of preferred stock shall be available solely to provide debenture leverage to licensees having 50 percent or more in aggregate dollar amount of their financings invested in smaller enterprises.

(g) GUARANTEE OF PAYMENT OF, AND AUTHORITY TO PURCHASE, PARTICIPATING SECURITIES.—

(1) DEFINITIONS.—In this subsection:

(A) COMBINED CAPITAL.—The term ''combined capital'' means the aggregate amount of private capital and outstanding leverage.

(B) EQUITY CAPITAL.—

(i) IN GENERAL.—The term ''equity capital'' means common or preferred stock or a similar instrument.

(ii) INCLUSIONS.—The term ''equity capital'' includes subordinated debt that has equity features, is not amortized, and provides for interest payments from appropriate sources, as determined by the Administrator.

(C) MANAGEMENT EXPENSE.—

(i) IN GENERAL.—The term ''management expense'' includes—

(I) salaries;

(II) office expenses; and

(III) the costs of travel, business development, office and equipment rental, bookkeeping, and the development, investigation and monitoring of investments.

(ii) EXCLUSIONS.—The term ''management expense'' does not include—

(I) the cost of services provided by specialized outside consultants, outside lawyers, and outside auditors that perform services not generally expected of a venture capital company; or

(II) the cost of services provided by any affiliate of a licensee that are not part of the normal process of making and monitoring venture capital investments.

(D) MAXIMUM TAX LIABILITY.—The term ''maximum tax liability'' means the amount of income allocated to each partner, shareholder, or member of a licensee (including an allocation to the Administrator as if the Administrator were a taxpayer) for Federal income tax purposes in the income tax return filed or to be filed by the licensee with respect to the fiscal year of the licensee immediately preceding a distribution described in clause (i) or (ii) of paragraph (10)(A), multiplied by the highest combined marginal Federal and State income tax rates for corporations or individuals, whichever is higher, on each type of income included in the return.

(E) PRIORITIZED PAYMENT.—The term ''prioritized payment'' includes—

(i) a dividend on stock;

(ii) interest on a debenture described in section 30101(11)(B) of this title; and

(iii) a priority return on a preferred limited partnership interest that is paid only to the extent of earnings.

(F) STATE INCOME TAX.—The term ''State income tax'', in reference to the State income tax liability of a licensee, means the income tax of the State in which a licensee's principal place of business is located.

(2) AUTHORITY.—

(A) IN GENERAL.—To encourage licensees to provide equity capital to small business concerns, the Administrator may guarantee the payment of the redemption price and prioritized payments on participating securities issued by licensees.

(B) PURCHASE BY TRUST OR POOL.—A trust or a pool acting on behalf of the Administrator may purchase participating securities under subparagraph (A).

(3) TERMS AND CONDITIONS.—A guarantee or purchase under paragraph (2) shall be made on such terms and conditions as the Administrator shall establish by regulation.

(4) REDEMPTION OF PARTICIPATING SECURITIES.—

(A) IN GENERAL.—A participating security shall be redeemed not later than 15 years after its date of issuance for an amount equal to 100 percent of the original issue price plus the amount of any accrued prioritized payment.

(B) CONTINUED OBLIGATION.—

(i) IN GENERAL.—If, at the time at which a participating security is redeemed, whether as scheduled or in advance, the issuing licensee—

(I) has not paid all accrued prioritized payments in full as provided in paragraph (5); and

(II) has not sold or otherwise disposed of all investments subject to profit distributions under paragraph (11);

the licensee's obligation to pay accrued and unpaid prioritized payments shall continue, and payment shall be made from the realized gain, if any, on the disposition of such investments, but if on disposition there is no realized gain, the obligation to pay accrued and unpaid prioritized payments shall be extinguished.

(ii) LIMITATION.—Between the date on which a participating security is redeemed and the date on which the licensee has paid all accrued prioritized payments in full and has sold or otherwise disposed of all investments subject to profit distributions, the licensee shall not make any in-kind distributions of such investments unless the licensee pays to the Administrator such sums, up to the amount of the unrealized appreciation on such investments, as are necessary to pay in full the accrued prioritized payments.

(5) PRIORITIZED PAYMENTS.—Prioritized payments on a participating security shall be preferred and cumulative and payable out of the retained earnings available for distribution (as defined by the Administrator) of the issuing licensee at—

(A) a 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 on such securities, adjusted to the nearest 0.125 percent; plus

(B) in the case of a participating security obligated after September 30, 2001, an additional charge, in an amount established annually by the Administrator, as necessary to reduce to zero the

cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing participating securities under this chapter, which amount may not exceed 1.46 percent per year, and which shall be paid to and retained by the Administrator.

(6) SENIORITY OF PARTICIPATING SECURITIES ON LIQUIDATION OF LICENSEE.—In the event of liquidation of a licensee, a participating security issued by the licensee shall be senior in priority for all purposes to any other equity interest in the licensee without regard to whether the participating security was issued before, on, or after the date on which the other equity interest was issued.

(7) INVESTMENT IN EQUITY CAPITAL.—A licensee that issues a participating security shall commit to invest or shall invest an amount equal to the outstanding face value of the participating security solely in equity capital.

(8) LIMITATION ON AMOUNT OF DEBT.—The only debt (other than leverage obtained under this chapter) that a licensee that issues a participating security may have outstanding shall be temporary debt in an amount that is equal to not more than 50 percent of the amount of private capital of the licensee.

(9) USE OF PROCEEDS TO PAY PRINCIPAL ON DEBENTURES.—The Administrator may permit the proceeds of a participating security issued by a licensee to be used to pay the principal amount due on an outstanding debenture guaranteed by the Administrator if—

(A) the licensee has outstanding equity capital invested in an amount equal to the amount of the debenture being refinanced; and

(B) the Administrator receives profit participation on such terms and conditions as the Administrator may determine, but not to exceed the percentages specified in paragraph (11).

(10) DISTRIBUTIONS; RETURN OF CAPITAL.—

(A) DISTRIBUTIONS TO PARTNERS, SHAREHOLDERS, AND MEMBERS.—

(i) ANNUAL DISTRIBUTIONS.—Notwithstanding subparagraph (B), if a licensee is operating as a limited partnership or as a subchapter S corporation or an equivalent passthrough entity for tax purposes and if there are no accumulated and unpaid prioritized payments, the licensee may make annual distributions to the partners, shareholders, or members in amounts not greater than each partner's, shareholder's, or member's maximum tax liability.

(ii) INTERIM DISTRIBUTIONS.—In addition to an annual distribution, a licensee may make a distribution under this subparagraph at any time during any calendar quarter based on an estimate of the maximum tax liability.

(iii) EXCESS DISTRIBUTION.—If a licensee makes one or more interim distributions for a calendar year, and the aggregate amount of those distributions exceeds the maximum amount that the licensee could have distributed based on a single annual computation, any subsequent distribution by the licensee under this subparagraph shall be reduced by an amount equal to the excess amount distributed.

(B) DISTRIBUTIONS TO INVESTORS.—After making any distributions as provided in subparagraph (A), a licensee with participating securities outstanding may distribute the balance of income to its investors (including the Administrator, in the percentages specified in paragraph (11)) if there are no accumulated and unpaid prioritized payments and if all amounts due the Administrator under paragraph (11) have been paid in full, subject to the following conditions:

(i) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 200 percent of the amount of private capital, any amounts distributed shall be made to private investors and to the Administrator in the ratio of leverage to private capital.

(ii) As of the date of the proposed distribution, if the amount of leverage outstanding is more than 100 percent but not more than 200 percent of the amount of private capital, 50 percent of any amounts distributed shall be made to the Administrator and 50 percent shall be made to the private investors.

(iii) If the amount of leverage outstanding is 100 percent, or less, of the amount of private capital, the ratio shall be that for distribution of profits as provided in paragraph (11).

(iv) Any amount received by the Administrator under clause (i) or (ii) shall be applied first as profit participation as provided in paragraph (11), and any remainder shall be applied as a prepayment of the principal amount of the participating securities or debentures.

(C) RETURN OF CAPITAL TO INVESTORS.—

(i) IN GENERAL.—After making any distributions under subparagraph (A), a licensee with participating securities out-

standing may return capital to its investors (including the Administrator) if there are no accumulated and unpaid prioritized payments and if all amounts due the Administrator under paragraph (11) have been paid in full.

(ii) RATIO.—Except as provided in clause (iii), any distribution under this subparagraph shall be made to private investors and to the Administrator in the ratio of private capital to leverage as of the date of the proposed distribution.

(iii) NO REQUIRED DISTRIBUTION TO ADMINISTRATOR.—If a licensee's amount of leverage outstanding is less than 50 percent of the amount of private capital or $10,000,000, whichever is less, no distribution shall be required to be made to the Administrator unless the Administrator determines, on a case by case basis, to require a distribution to the Administrator to reduce the amount of outstanding leverage to an amount less than $10,000,000.

(11) ADMINISTRATOR'S PROFIT PARTICIPATION.—

(A) IN GENERAL.—A licensee that issues participating securities shall agree to allocate to the Administrator a share of its profits determined by the relationship of its private capital to the amount of participating securities guaranteed by the Administrator in accordance with the following:

(i) If the total amount of participating securities is 100 percent of private capital or less, the licensee shall allocate to the Administrator a percentage share computed as follows:

(I)(aa) the amount of participating securities; divided by

(bb) the amount of private capital; multiplied by

(II) 9 percent.

(ii) If the total amount of participating securities is more than 100 percent but not greater than 200 percent of private capital, the licensee shall allocate to the Administrator a percentage share computed as follows:

(I) 9 percent; plus

(II)(aa) 3 percent of the amount of participating securities minus the amount of private capital; divided by

(bb) the amount of private capital.

(B) MANAGEMENT EXPENSES.—For purposes of computing profit participation under this paragraph, except as otherwise determined by the Administrator, the management expenses of a licensee that issues participating securities shall not be greater than

2.5 percent per year of the combined capital of the company, plus $125,000 if the licensee's combined capital is less than $20,000,000.

(C) MAXIMUM PERCENTAGE.—

(i) IN GENERAL.—Notwithstanding any other provision of this paragraph, unless required by operation of clause (ii), the total percentage required by this paragraph shall not exceed 12 percent.

(ii) ADJUSTMENT.—If, on the date on which a participating security is marketed, the interest rate on Treasury bonds with a maturity of 10 years is a rate other than 8 percent, the Administrator shall adjust the rate specified in subparagraph (A), either higher or lower, by the same percentage by which the Treasury bond rate is higher or lower than 8 percent.

(D) EFFECT OF PARAGRAPH.—This paragraph does not create any ownership interest of the Administrator in a licensee.

(12) IN-KIND DISTRIBUTIONS.—

(A) IN GENERAL.—A licensee may make an in-kind distribution of securities only if the securities are publicly traded and marketable.

(B) ADMINISTRATOR'S SHARE.—

(i) IN GENERAL.—A licensee shall deposit the Administrator's share of an in-kind distribution of securities for disposition with a trustee designated by the Administrator, or, at the option of the Administrator and with the agreement of the licensee, the Administrator may direct the licensee to retain the Administrator's share.

(ii) TRUSTEE.—A trustee designated by the Administrator under clause (i) shall be a person that is knowledgeable about and proficient in the marketing of thinly traded securities.

(iii) SALE.—If the licensee retains the Administrator's share, the licensee shall sell the Administrator's share and promptly remit the proceeds to the Administrator.

(13) ADDITIONAL RESTRICTIONS AND LIMITATIONS.—Participating securities guaranteed under this subsection shall be subject to such restrictions and limitations, in addition to restrictions and limitations specified in this subsection, as the Administrator may determine.

(h) COMPUTATION OF AMOUNTS DUE UNDER PARTICIPATING SECURITIES.—The computation of amounts due the Administrator under participating securities shall be subject to the following terms and conditions:

(1) The formula in subsection (g)(11) shall be computed annually, and the Administrator shall receive distributions of the Administrator's profit participation at the same time as other investors in a licensee.

(2) The formula shall not be modified due to an increase in the private capital unless the increase is provided for in a proposed business plan submitted to and approved by the Administrator.

(3) After a distribution is made, the Administrator's share of the distribution shall not be recomputed or reduced.

(4) If a licensee prepays or repays a participating security, the Administrator shall receive the requisite participation on the distribution of profits due to any investments held by the licensee on the date of the prepayment or repayment.

(5) A licensee that was licensed on or before March 31, 1993, may exclude from profit participation all investments held on that date. If such a licensee does so, the Administrator shall determine the amount of the future expenses attributable to the prior investment. If the licensee issues participating securities to refinance debentures as authorized in subsection (g)(9), the licensee may not exclude profits on existing investments under this paragraph.

(i) LEVERAGE FEE.—With respect to leverage granted by the Administrator to a licensee, the Administrator shall collect from the licensee a nonrefundable fee in an amount equal to 3 percent of the face amount of the leverage in the following manner:

(1) One percent on the date on which the Administrator enters into a commitment for leverage with the licensee.

(2) The balance of 2 percent (or 3 percent if no commitment has been entered into by the Administrator) on the date on which the leverage is drawn by the licensee.

(j) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administrator under this section shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing debentures and participating securities under this chapter.

(k) PERIODIC ISSUANCE OF GUARANTEES.—The Administrator shall issue guarantees under this section—

(1) at periodic intervals of not less than every 12 months; and

(2) at such shorter intervals as the Administrator considers appropriate, taking into consideration the amount and number of guarantees.

(*l*) ENERGY SAVING DEBENTURES.—In addition to any other authority under this subtitle, a small business investment company licensed in fiscal year 2009 or any fiscal year thereafter may issue energy saving debentures.

§ 30305. Equity capital for small business concerns

(a) FUNCTION OF LICENSEES.—It shall be a function of a licensee to provide a source of equity capital for small business concerns in such manner and under such terms as the licensee may determine in accordance with the regulations of the Administrator.

(b) CONDITIONS.—Before a licensee provides any capital to a small business concern under this section—

(1) the licensee may require the small business concern to refinance any or all of its outstanding indebtedness so that the licensee is the only holder of any evidence of indebtedness of the small business concern; and

(2) except as provided in regulations issued by the Administrator, the small business concern shall agree that the small business concern will not thereafter incur any indebtedness without first securing the approval of the licensee and giving the licensee the first opportunity to finance the indebtedness.

(c) DIRECT OR COOPERATIVE PROVISION OF CAPITAL.—Equity capital provided to an incorporated small business concern under this section may be provided directly or in cooperation with other investors, incorporated or unincorporated, through agreements to participate on an immediate basis.

§ 30306. Long-term loans to small business concerns

(a) AUTHORIZATION.—A licensee may make a loan, in the manner and subject to the conditions described in this section, to a small business concern to provide the small business concern with funds needed for sound financing, growth, modernization, and expansion.

(b) DIRECT LOANS; LOANS ON PARTICIPATION BASIS.—A loan made under this section may be made directly or in cooperation with one or more other lenders through an agreement to participate on an immediate or deferred basis.

(c) MAXIMUM RATE OF INTEREST.—

(1) IN GENERAL.—The maximum rate of interest for a licensee's share of a loan made under this section shall be determined by the Administrator.

(2) BASIS OF MAXIMUM RATE.—The Administrator shall permit a licensee that has issued debentures under this chapter to charge a maximum rate of interest based on—

(A) the coupon rate of interest on the outstanding debentures, determined on an annual basis; plus

(B) such other expenses of the licensee as may be approved by the Administrator.

(d) MATURITY.—A loan made under this section shall have a maturity not exceeding 20 years.

(e) SOUNDNESS OF LOAN; SECURITY.—A loan made under this section shall be of such sound value, or so secured, as reasonably to ensure repayment.

(f) EXTENSION OR RENEWAL.—A licensee that has made a loan to a small business concern under this section may extend the maturity of or renew the loan for additional periods, not exceeding 10 years, if the licensee finds that the extension or renewal will aid in the orderly liquidation of the loan.

§ 30307. Limitation on amount of financing

If a licensee has obtained financing from the Administrator and the financing remains outstanding, the aggregate amount of obligations and securities acquired and for which commitments may be issued by the licensee under this chapter for any single small business concern shall not exceed 20 percent of the amount of private capital of the licensee, without the approval of the Administrator.

§ 30308. Cooperation with banks and other investors or lenders

(a) IN GENERAL.—Under any circumstances in which it is practicable, the operations of a licensee (including the generation of business) may be undertaken in cooperation with banks or other investors or lenders, and any servicing or initial investigation required for loans or acquisitions of securities by the licensee under this chapter may be handled through such banks or other investors or lenders on a fee basis.

(b) FEES.—A licensee may receive fees for services rendered to banks and other investors and lenders.

§ 30309. Advisory services; Federal Reserve Banks as depositories or fiscal agents; investment of funds

(a) ADVISORY SERVICES.—A licensee, under any circumstances in which it is practicable, may—

(1) use the advisory services of the Federal Reserve System and of the Department of Commerce that are available for and useful to industrial and commercial businesses; and

(2) provide consulting and advisory services on a fee basis and have on its staff persons competent to provide such services.

(b) FEDERAL RESERVE BANK AS DEPOSITORY OR FISCAL AGENT.—A Federal Reserve bank may act as a depository or fiscal agent for a licensee.

(c) INVESTMENT OF FUNDS.—A licensee that was licensed before October 1, 2004, and has outstanding financings may invest funds not needed for its operations—

(1) in direct obligations of, or obligations guaranteed as to principal and interest by, the United States;

(2) in certificates of deposit or other accounts of federally insured banks or other federally insured depository institutions, if the certificates or other accounts mature or are otherwise fully available not more than one year after the date of the investment; or

(3) in mutual funds, securities, or other instruments that consist of, or represent pooled assets of, investments described in paragraph (1) or (2).

§ 30310. Nonliability of the United States

Except as expressly provided otherwise in this subtitle, nothing in this subtitle or in any other provision of law shall be deemed to impose any liability on the United States with respect to any obligation entered into, or stocks issued, or commitments made, by a licensee.

§ 30311. Certifications of eligibility

(a) CERTIFICATION BY SMALL BUSINESS CONCERN.—Before receiving financial assistance from a licensee, a small business concern shall certify in writing that the small business concern meets the applicable eligibility requirements of this chapter.

(b) CERTIFICATION BY LICENSEE.—Before providing financial assistance to a small business concern under this chapter, a licensee shall certify in writing that—

(1) the licensee has reviewed the application for assistance of the small business concern; and

(2) all documentation and other information supports the eligibility of the applicant.

(c) RETENTION OF CERTIFICATIONS.—A certificate made under subsection (a) or (b) shall be retained by a licensee for the duration of the financial assistance covered by the certificate.

§ 30312. Interest rates

(a) DEFINITION OF INTEREST.—In this section:

(1) IN GENERAL.—The term ''interest'' means the maximum mandatory sum, expressed in dollars or as a percentage rate, that is payable with respect to a business loan amount received by a small business concern.

(2) EXCLUSION.—The term ''interest'' does not include the value, if any, of a contingent obligation (including a warrant, royalty, or conversion right) granting a licensee an ownership interest in the equity or

increased future revenue of a small business concern receiving the business loan.

(b) INTEREST RATE.—A licensee may charge interest on a loan at a rate that does not exceed the maximum rate prescribed by regulation by the Administrator for loans made by any licensee (determined without regard to any State rate incorporated by the regulation).

(c) PREEMPTION OF STATE LAW.—A State law (including a constitutional provision) shall be preempted for purposes of subsection (a) with respect to a loan if the loan is made before the date, on or after April 1, 1980, on which the State adopts a law, or certifies that the voters of the State have voted in favor of any provision, constitutional or otherwise, that states explicitly and by its terms that the State does not want this section to apply with respect to loans made in the State.

(d) EXCESSIVE INTEREST.—

(1) FORFEITURE.—If the maximum rate of interest authorized under subsection (a) on a loan made by a licensee exceeds the rate that would be authorized by applicable State law if the State law were not preempted under subsection (a), the charging of interest at a rate in excess of the rate authorized by subsection (a) shall be deemed a forfeiture of the greater of—

(A) all interest that the loan carries with it; or

(B) all interest that has been agreed to be paid on the loan.

(2) DOUBLE RECOVERY.—In the case of a loan with respect to which there is a forfeiture of interest under paragraph (1), the person that paid the interest may recover from the licensee that made the loan, in a civil action commenced in a court of appropriate jurisdiction not later than 2 years after the most recent payment of interest, an amount equal to twice the amount of the interest paid on the loan.

§ 30313. Conflicts of interest

(a) IN GENERAL.—For the purpose of controlling conflicts of interest that may be detrimental to small business concerns, to licensees, to the shareholders, partners, or members of small business concerns or licensees, or to the purposes of this subtitle, the Administrator shall adopt regulations to govern transactions with—

(1) any officer, director, shareholder, partner, or member of a licensee; or

(2) any person or concern in which any interest, direct or indirect, financial or otherwise, is held by any officer, director, shareholder, partner, or member of—

(A) a licensee; or

(B) any person or concern with an interest, direct or indirect, financial or otherwise, in a licensee.

(b) CONTENTS.—The regulations under subsection (a) shall include appropriate requirements for public disclosure necessary to the purposes of this section.

§ 30314. Ineligibility of guaranteed obligations for purchase by Federal Financing Bank

No provision of law authorizes the Federal Financing Bank to acquire—

(1) any obligation the payment of principal or interest on which has at any time been guaranteed in whole or in part under this chapter;

(2) any obligation that is an interest in an obligation described in paragraph (1); or

(3) any obligation that is secured by, or substantially all of the value of which is attributable to, an obligation described in paragraph (1) or (2).

§ 30315. Trust certificates

(a) ISSUANCE.—

(1) IN GENERAL.—The Administrator may issue trust certificates representing ownership of all or a fractional part of—

(A) debentures issued by a licensee and guaranteed by the Administrator under this chapter; or

(B) participating securities issued by a licensee and purchased and guaranteed under section 30304 of this title.

(2) TRUST OR POOL.—A trust certificate issued under paragraph (1) shall be based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures or guaranteed participating securities.

(b) GUARANTEE.—

(1) IN GENERAL.—The Administrator may, on such terms and conditions as the Administrator considers appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator (or an agent of the Administrator) for purposes of this section.

(2) LIMITATION.—A guarantee shall be limited to the extent of principal and interest on the guaranteed debentures or the redemption price of and priority payments on the participating securities that compose the trust or pool.

(3) PREPAYMENT OR REDEMPTION.—

(A) REDUCTION OF GUARANTEE.—If a debenture in a trust or pool is prepaid or a participating security is redeemed, voluntarily or involuntarily, or in the event of default of a debenture or vol-

untary or involuntary redemption of a participating security, the guarantee of timely payment of principal and interest on the related trust certificates shall be reduced in proportion to the amount of principal and interest that the prepaid debenture or redeemed participating security and priority payments represent in the trust or pool.

(B) LIMITATION ON GUARANTEE OF INTEREST.—Interest on a prepaid or defaulted debenture or a priority payment on a participating security shall accrue and be guaranteed by the Administrator only through the date of payment on the guarantee.

(C) CALL OF TRUST CERTIFICATE.—During the term of a trust certificate, the trust certificate may be called for redemption due to prepayment or default of all debentures or redemption, voluntary or involuntary, of all participating securities residing in the trust or pool.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator (or an agent of the Administrator) under this section.

(d) FEES.—

(1) ADMINISTRATOR.—The Administrator shall not collect a fee for a guarantee under this section.

(2) AGENT OF THE ADMINISTRATOR.—This subsection does not preclude an agent of the Administrator from collecting a fee approved by the Administrator for performing the functions described in subsection (f)(2).

(e) SUBROGATION; OWNERSHIP RIGHTS IN DEBENTURES AND PARTICIPATING SECURITIES.—

(1) SUBROGATION.—If the Administrator pays a claim under a guarantee issued under this section, the Administrator shall be subrogated fully to the rights satisfied by the payment.

(2) OWNERSHIP RIGHTS IN DEBENTURES AND PARTICIPATING SECURITIES.—No Federal, State or local law shall preclude or limit the exercise by the Administrator of the Administrator's ownership rights in the debentures or participating securities residing in a trust or pool against which trust certificates are issued.

(f) CENTRAL REGISTRATION; REGULATION OF BROKERS AND DEALERS.—

(1) CENTRAL REGISTRATION.—The Administrator shall provide for a central registration of all trust certificates sold under this section.

(2) AGENT.—

(A) IN GENERAL.—The Administrator shall contract with one or more agents to carry out on behalf of the Administrator the pooling and the central registration functions of this section including, notwithstanding any other provision of law—

(i) maintenance on behalf of and under the direction of the Administrator, such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate trusts or pools backed by debentures or participating securities guaranteed under this chapter; and

(ii) the issuance of trust certificates to facilitate such poolings.

(B) BOND OR INSURANCE.—An agent under subparagraph (A) shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the Government.

(3) DISCLOSURE.—The Administrator shall require a seller of a trust certificate issued under this section to disclose to the purchaser, before the sale, information on the terms, conditions, and yield of the trust certificate.

(4) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates sold under this section.

(5) EFFECT OF SUBSECTION.—This subsection does not preclude the use of a book-entry or other electronic form of registration for trust certificates.

(g) PERIODIC ISSUANCE OF TRUST CERTIFICATES.—The Administrator shall issue trust certificates under this section—

(1) at periodic intervals of not less than every 12 months; and

(2) at such shorter intervals as the Administrator considers appropriate, taking into consideration the amount and number of trust certificates.

§ 30316. Regulations

The Administrator may prescribe regulations governing the operations of licensees, and regulations to carry out this subtitle, in accordance with the purposes of this subtitle.

§ 30317. Unlawful acts and omissions

(a) VIOLATION BY LICENSEE DEEMED VIOLATION BY PERSON PARTICIPATING.—If a licensee violates any provision of this subtitle (including a regulation issued under this subtitle) by reason of its failure to comply with the terms of the provision (or regulation) or by reason of its engaging in

any act or practice that constitutes or will constitute a violation of the provision (or regulation), the violation shall also be a violation and an unlawful act on the part of any person who, directly or indirectly, authorizes, orders, participates in, or causes, brings about, counsels, aids, or abets in the commission of any act, practice, or transaction that constitutes or will constitute, in whole or in part, the violation.

(b) BREACH OF FIDUCIARY DUTY.—It shall be unlawful for an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a licensee to engage in any act or practice, or to omit any act, in breach of the fiduciary duty of the officer, director, employee, agent, or participant if, as a result of engaging in the act or practice or of the omission to act, the licensee suffers or is in imminent danger of suffering financial loss or other damage.

(c) DISQUALIFICATION OF OFFICERS AND EMPLOYEES FOR DISHONESTY, FRAUD, OR BREACH OF TRUST.—Except with the written consent of the Administrator, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of a licensee, or to become an agent or participant in the conduct of the affairs or management of a licensee, if the person—

(A) has been convicted of—

(i) a felony; or

(ii) any other criminal offense involving dishonesty or breach of trust; or

(B) has been found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

(2) for any person to continue to serve in any of the above-described capacities, if the person, after November 6, 1966—

(A) is convicted of—

(i) a felony; or

(ii) any other criminal offense involving dishonesty or breach of trust; or

(B) is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

§ 30318. Investigations; examinations; valuations

(a) INVESTIGATION OF VIOLATIONS.—

(1) IN GENERAL.—The Administrator may make such investigations as the Administrator considers necessary to determine whether a li-

censee or any other person has engaged or is about to engage in an act or practice that constitutes or will constitute a violation of any provision of this subtitle (including a regulation under this subtitle) or of an order issued under this subtitle.

(2) STATEMENTS.—The Administrator shall permit any person to file with the Administrator a statement in writing, under oath or otherwise as the Administrator shall determine, as to all the facts and circumstances concerning the matter to be investigated.

(3) POWERS.—For the purpose of any investigation, the Administrator may administer oaths and affirmations, subpoena witnesses, compel the attendance of witnesses, take evidence, and require the production of any records that are relevant to the inquiry. The attendance of witnesses and the production of any such records may be required from any place in the United States.

(4) CONTUMACY OR REFUSAL TO OBEY ORDER OF THE ADMINISTRATOR.—

(A) IN GENERAL.—In case of contumacy by, or refusal to obey a subpoena issued to, any person (including a licensee), the Administrator may invoke the aid of any court of the United States within the jurisdiction of which the investigation or proceeding is carried on, or in which the person resides or carries on business, in requiring the attendance and testimony of witnesses and the production of records, and the court may issue an order requiring the person to appear before the Administrator, to produce records, or to give testimony touching the matter under investigation.

(B) FAILURE TO OBEY COURT ORDER.—A failure to obey an order of the court may be punished by the court as a contempt of court.

(C) PROCESS.—Process in a case under this paragraph may be served in the judicial district of which the person is an inhabitant or wherever the person may be found.

(b) EXAMINATIONS OF AND REPORTS BY LICENSEES.—

(1) IN GENERAL.—A licensee shall be subject to examinations made by direction of the Investment Division of the Administration, which may be conducted with the assistance of a private sector entity that has the qualifications to conduct and expertise in conducting such examinations.

(2) EXAMINATION FEE.—The Administrator may assess against a licensee that is examined, as an examination fee, the cost of the examination (including compensation of the examiners), and the licensee shall pay the examination fee.

(3) USE OF EXAMINATION FEES.—Examination fees collected under this subsection shall be deposited in the account for salaries and expenses of the Administration, and are authorized to be appropriated solely to cover the costs of examinations and other program oversight activities.

(4) REPORTS.—

(A) IN GENERAL.—A licensee shall make such reports to the Administrator at such times and in such form as the Administrator may require.

(B) EXEMPTION.—The Administrator may exempt from a requirement to make a report a licensee that is registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) to the extent necessary to avoid duplication in reporting requirements.

(C) VIOLATION.—

(i) IN GENERAL.—Except as provided in clause (ii), a licensee that violates any regulation or written directive issued by the Administrator requiring the filing of any regular or special report under subparagraph (A) shall pay to the United States a civil penalty of not more than $100 for each day of the continuance of the licensee's failure to file the report, unless it is shown that the failure is due to reasonable cause and not due to willful neglect.

(ii) EXEMPTION FROM REPORTING REQUIREMENTS.—

(I) IN GENERAL.—If the Administrator determines that granting an exemption would not be inconsistent with the public interest or the protection of the Administration, the Administrator may exempt a licensee from clause (i)—

(aa) in whole or in part; and

(bb) on such terms and conditions and for such period of time as the Administrator considers necessary and appropriate.

(II) PROCEDURE.—The Administrator may grant an exemption under subclause (I)—

(aa) by regulation; or

(bb) on application of an interested party, at any time previous to a violation described in clause (i), by order, after notice and opportunity for hearing.

(iii) ALTERNATIVE REQUIREMENTS.—The Administrator may for purposes of this subparagraph make any alternative

requirement that the Administrator considers to be appropriate to a situation.

(iv) CIVIL ACTION.—The civil penalty provided for in this subparagraph may be recovered in a civil action brought by the Administrator.

(5) SCOPE OF EXAMINATION.—An examination shall be conducted in such detail as to determine whether the licensee—

(A) has engaged solely in lawful activities and those contemplated by this chapter;

(B) has engaged in prohibited conflicts of interest;

(C) has acquired or exercised illegal control of an assisted small business;

(D) has made investments in small business concerns for not less than one year;

(E) has invested more than 20 percent of its capital in any individual small business, if that restriction is applicable;

(F) has engaged in relending, foreign investments, or passive investments; or

(G) has charged an interest rate in excess of the maximum permitted by law.

(6) FREQUENCY OF EXAMINATION.—

(A) IN GENERAL.—A licensee shall be examined at least every 2 years.

(B) WAIVER.—The Administrator may waive an examination of a licensee—

(i) for up to one additional year if, the Administrator determines that such a delay would be appropriate, based on the amount of debentures being issued by the licensee and the repayment record of the licensee, the prior operating experience of the licensee, the contents and results of the last examination of the licensee, and the management expertise of the licensee; or

(ii) if the licensee's operations have been suspended while the licensee is involved in litigation or is in receivership.

(c) VALUATIONS.—

(1) FREQUENCY OF VALUATIONS.—

(A) IN GENERAL.—A licensee shall submit to the Administrator a written valuation of the loans and investments of the licensee not less often than semiannually, or otherwise on the request of the Administrator, except that a licensee with no leverage out-

standing shall submit a valuation annually unless the Administrator determines otherwise.

(B) MATERIAL ADVERSE CHANGES.—Not later than 30 days after the end of a fiscal quarter of a licensee during which a material adverse change in the aggregate valuation of the loans and investments or operations of the licensee occurs, the licensee shall notify the Administrator in writing of the nature and extent of that change.

(C) INDEPENDENT CERTIFICATION.—

(i) IN GENERAL.—Not less than once during each fiscal year, a licensee shall submit to the Administrator the financial statements of the licensee, audited by an independent certified public accountant approved by the Administrator.

(ii) AUDIT REQUIREMENTS.—An audit conducted under clause (i) shall include—

(I) a review of the procedures and documentation used by the licensee in preparing the valuations required by this section; and

(II) a statement by the independent certified public accountant that the valuations were prepared in conformity with the valuation criteria applicable to the licensee established in accordance with paragraph (2).

(2) VALUATION CRITERIA.—A valuation submitted under this subsection shall be prepared by the licensee in accordance with valuation criteria that—

(A) shall be established or approved by the Administrator; and

(B) shall include appropriate safeguards to ensure that the noncash assets of a licensee are not overvalued.

§ 30319. Revocation and suspension of licenses; cease and desist orders

(a) GROUNDS FOR REVOCATION OR SUSPENSION.—The Administrator may revoke or suspend a license—

(1) for a false statement knowingly made in a written statement required under this chapter (including a regulation under this chapter);

(2) for failure, in a written statement required under this chapter (including a regulation under this chapter), to state a material fact necessary to make the statement not misleading in the light of the circumstances under which the statement is made;

(3) for willful or repeated violation of, or willful or repeated failure to observe, any provision of this chapter (including a regulation under this chapter); or

(4) for violation of, or failure to observe, a cease and desist order issued by the Administrator under this section.

(b) GROUNDS FOR CEASE AND DESIST ORDER.—If a licensee or any other person has not complied with any provision of this subtitle (including a regulation issued under this subtitle) or is engaging or is about to engage in any act or practice that constitutes or will constitute a violation of this subtitle (including a regulation), the Administrator may—

(1) order such licensee or other person—

(A) to cease and desist from the action or failure to act; and

(B) to take such action or to refrain from such action as the Administrator considers necessary to ensure compliance with this subtitle (including regulations); and

(2) suspend the license of a licensee against which an order has been issued until the licensee complies with the order.

(c) PROCEDURE.—

(1) ORDER TO SHOW CAUSE.—

(A) IN GENERAL.—Before revoking or suspending a license under subsection (a) or issuing a cease and desist order under subsection (b), the Administrator shall serve on the licensee and any other person involved an order to show cause why an order revoking or suspending the license or a cease and desist order should not be issued.

(B) CONTENTS.—An order to show cause shall—

(i) 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

(ii) state that a hearing will be held before the Administrator at a time and place stated in the order.

(2) DETERMINATION.—

(A) IN GENERAL.—If, after hearing (or waiver of hearing), the Administrator determines on the record that an order revoking or suspending the license or a cease and desist order should issue, the Administrator shall promptly issue such an order.

(B) CONTENTS.—An order revoking or suspending a license or cease and desist order shall—

(i) include a statement of the findings of the Administrator and the grounds and reasons for the order; and

(ii) state the effective date of the order.

(C) SERVICE.—The Administrator shall cause an order revoking or suspending a license or cease and desist order to be served on the licensee and any other person involved.

(d) SUBPOENAS.—

(1) IN GENERAL.—The Administrator may require by subpoena the attendance and testimony of witnesses and the production of all records relating to a hearing from any place in the United States.

(2) FEES AND MILEAGE.—A witness summoned before the Administrator shall be paid by the party at whose instance the witness is called the same fees and mileage that are paid witnesses in the courts of the United States.

(3) DISOBEDIENCE OF SUBPOENA.—In case of disobedience to a subpoena, the Administrator, or any party to a proceeding before the Administrator, may invoke the aid of any court of the United States in requiring the attendance and testimony of a witness and the production of a record.

(e) PETITION TO MODIFY OR SET ASIDE ORDER.—

(1) FILING.—

(A) PETITION BY RIGHT.—An order issued by the Administrator under this section shall be final and conclusive unless, within 30 days after service of the order, the licensee or other person against which the order is issued appeals to the United States court of appeals for the circuit in which the licensee has its principal place of business by filing with the clerk of the court a petition praying that the Administrator's order be set aside or modified in the manner stated in the petition.

(B) PETITION BY LEAVE OF COURT.—After the expiration of the 30-day period described in subparagraph (A), a petition may be filed only by leave of court on a showing of reasonable grounds for failure to file the petition within the 30-day period.

(2) TRANSCRIPT.—The clerk of the court shall immediately cause a copy of the petition to be delivered to the Administrator, and the Administrator shall certify and file in the court a transcript of the record on which the order complained of was entered. If, before the transcript is filed, the Administrator amends or sets aside the order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Administrator.

(3) STAY OR SUSPENSION.—The filing of a petition for review shall not of itself stay or suspend the operation of the order of the Administrator, but the court of appeals may restrain or suspend, in whole or in part, the operation of the order pending the final hearing and determination of the petition.

(4) COURT ACTION.—The court may affirm, modify, or set aside the order of the Administrator.

(5) ADDITIONAL EVIDENCE.—

(A) REOPENING OF HEARING.—If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the Administrator to reopen the hearing for the taking of such evidence, in such manner and on such terms and conditions as the court considers proper.

(B) MODIFIED OR NEW FINDINGS.—The Administrator—

(i) may modify the findings as to the facts, or make new findings, by reason of the additional evidence so taken; and

(ii) shall file any modified or new findings and the amendments, if any, of the order, with the record of such additional evidence.

(6) LIMITATION ON CONSIDERATION OF OBJECTIONS.—No objection to an order of the Administrator shall be considered by the court unless the objection was urged before the Administrator or, if it was not so urged, unless there were reasonable grounds for failure to do so.

(7) REVIEW OF JUDGMENT.—A judgment of the court affirming, modifying, or setting aside an order of the Administrator shall be subject only to review by the Supreme Court on certification or certiorari as provided in section 1254 of title 28.

(f) ENFORCEMENT OF ORDER.—

(1) IN GENERAL.—If a licensee or other person against which an order is issued under this section fails to obey the order, the Administrator—

(A) may apply to the United States court of appeals for the circuit in which the licensee has its principal place of business for the enforcement of the order; and

(B) shall file a transcript of the record on which the order complained of was entered.

(2) NOTICE.—On filing of an application under paragraph (1), the court shall cause notice of the application to be served on the licensee or other person.

(3) EVIDENCE, PROCEDURE, AND JURISDICTION.—The evidence to be considered, the procedure to be followed, and the jurisdiction of the court shall be the same as is provided in subsection (e) for an application to set aside or modify an order.

§ 30320. Removal or suspension of, or prohibition of participation by, management officials

(a) REMOVAL.—

(1) NOTICE OF REMOVAL.—The Administrator may serve on a management official a written notice of the Administrator's intention to remove the management official if, in the opinion of the Administrator—

(A) the management official—

(i) has willfully and knowingly committed a substantial violation of—

(I) this subtitle (including a regulation issued under this subtitle); or

(II) a cease and desist order that has become final; or

(ii) has willfully and knowingly committed or engaged in an act, omission, or practice that constitutes a substantial breach of a fiduciary duty of the management official as a management official; and

(B) the violation or breach of fiduciary duty is one involving personal dishonesty on the part of the management official.

(2) CONTENTS OF NOTICE.—A notice under paragraph (1) shall—

(A) contain a statement of the facts constituting grounds for the notice; and

(B) establish a time and place at which a hearing will be held on the proposed removal.

(3) HEARING.—

(A) TIMING.—A hearing on the notice shall be established for a date not earlier than 30 days nor later than 60 days after the date of service of the notice under paragraph (2), unless an earlier or a later date is set by the Administrator at the request of—

(i) the management official, for good cause; or

(ii) the Attorney General.

(B) CONSENT.—Unless the management official appears at a hearing under this paragraph in person or by an authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under paragraph (4).

(4) ISSUANCE OF ORDER OF REMOVAL.—

(A) IN GENERAL.—In the event of consent under paragraph (3)(B), or if on 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 considers appropriate.

(B) EFFECTIVENESS.—An order under subparagraph (A) shall—

(i) become effective on the expiration of 30 days after the date of service on the management official and the licensee (except in the case of an order issued on consent as described in paragraph (3)(B), which shall become effective at the time specified in the order); and

(ii) remain effective and enforceable, except to such extent as the order is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

(b) SUSPENSION OR PROHIBITION OF PARTICIPATION.—

(1) IN GENERAL.—The Administrator may, if the Administrator considers it necessary for the protection of the licensee or the interests of the Administration, suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a licensee, or both, a management official described in subsection (a)(1) by written notice to that effect served on the management official and the licensee.

(2) EFFECTIVENESS.—A suspension or prohibition under paragraph (1)—

(A) shall become effective on service of notice under paragraph (1); and

(B) unless stayed by a court in proceedings under paragraph (3), shall remain in effect—

(i) until completion of the administrative proceedings pursuant to a notice of intention to remove served under subsection (a); 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.

(3) JUDICIAL REVIEW.—Not later than 10 days after a management official is suspended from office or prohibited from participation in the management or conduct of the affairs of a licensee under paragraph (1), the management official may apply to the United States district court for the judicial district in which the principal place of business of the licensee is located, or the United States District Court for the District of Columbia, for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intention to remove served on the management official under subsection (a), and the court shall have jurisdiction to stay the suspension or prohibition.

(c) SUSPENSION, OR PROHIBITION OF PARTICIPATION, ON CRIMINAL CHARGES.—

(1) IN GENERAL.—If a management official is charged, in an information, indictment, or complaint authorized by a United States attorney, with the commission of or participation in a felony involving dishonesty or breach of trust, the Administrator may, by written notice served on 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 licensee, or both.

(2) EFFECTIVENESS.—A suspension or prohibition under paragraph (1) shall remain in effect—

(A) until the subject information, indictment, or complaint is finally disposed of; or

(B) until it is terminated by the Administrator.

(3) CONVICTION.—If a judgment of conviction with respect to an offense described in paragraph (1) is entered against a management official, at such time as the judgment is not subject to further appellate review, the Administrator may issue and serve on the management official an order removing the management official from office, which removal shall become effective on service of a copy of the order on the licensee.

(4) DISMISSAL OR OTHER DISPOSITION.—A finding of not guilty or other disposition of charges described in paragraph (1) shall not preclude the Administrator from thereafter instituting proceedings to suspend or remove the management official from office, or to prohibit the management official from participation in the management or conduct of the affairs of the licensee, or both, under subsection (a) or (b).

(d) PROCEDURE.—

(1) HEARING VENUE.—A hearing under this section shall be—

(A) held in the Federal judicial district or in the territory in which the principal office of the licensee is located, unless the party afforded the hearing consents to another place; and

(B) conducted in accordance with chapter 5 of title 5.

(2) ISSUANCE OF ORDERS.—After a hearing under this section, and not later than 90 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall—

(A) render a decision in the matter (which shall include findings of fact on which the decision is predicated); and

(B) serve on each party to the proceeding an order or orders consistent with this section.

(3) MODIFICATION OF ORDER.—The Administrator may modify, terminate, or set aside an order issued under this section—

(A) at any time, on such notice, and in such manner as the Administrator considers proper, unless a petition for review is timely filed in a court of appeals of the United States, as provided in paragraph (4)(B), and thereafter until the record in the proceeding has been filed in accordance with paragraph (4)(C); and

(B) on such filing of the record, with permission of the court.

(4) JUDICIAL REVIEW.—

(A) IN GENERAL.—Judicial review of an order issued under this section shall be exclusively as provided in this subsection.

(B) PETITION FOR REVIEW.—A party to a hearing under this section may obtain a review of an order issued under paragraph (2) (other than an order issued with the consent of the management official concerned or an order issued under subsection (c)) by filing in the court of appeals of the United States for the circuit in which the principal office of the licensee is located, or in the United States Court of Appeals for the District of Columbia Circuit, not later than 30 days after the date of service of the order, a written petition praying that the order of the Administrator be modified, terminated, or set aside.

(C) NOTIFICATION TO THE ADMINISTRATOR.—A copy of a petition filed under subparagraph (B) shall be forthwith transmitted by the clerk of the court to the Administrator, and thereupon the Administrator shall file in the court the record in the proceeding, as provided in section 2112 of title 28.

(D) COURT JURISDICTION.—On the filing of a petition under subparagraph (B)—

(i) the court shall have jurisdiction, which, on the filing of the record under subparagraph (C), shall be exclusive, to affirm, modify, terminate, or set aside, in whole or in part, the order of the Administrator;

(ii) review of the proceedings shall be had as provided in chapter 7 of title 5; and

(iii) the judgment and decree of the court shall be final, except that the judgment and decree shall be subject to review by the Supreme Court on certiorari as provided in section 1254 of title 28.

(E) JUDICIAL REVIEW NOT A STAY.—The commencement of proceedings for judicial review under this paragraph shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Administrator under this section.

§ 30321. Direct civil enforcement actions

(a) FORFEITURE OF RIGHTS, PRIVILEGES, AND FRANCHISES.—

(1) IN GENERAL.—If a licensee violates or fails to comply with any provision of this subtitle (including a regulation prescribed under this subtitle), all of the licensee's rights, privileges, and franchises derived from this subtitle may be forfeited.

(2) CIVIL ACTION.—Before a licensee is declared dissolved, or its rights, privileges, and franchises forfeited, any noncompliance with or violation of this subtitle shall be determined by a court of the United States of competent jurisdiction in a civil action brought in the district, territory, or other place subject to the jurisdiction of the United States in which the principal office of the licensee is located. Any such civil action shall be brought by the United States at the instance of the Administrator or the Attorney General.

(b) INJUNCTIONS AND OTHER ORDERS.—

(1) IN GENERAL.—If a licensee or any other person engages or is about to engage in an act or practice that constitutes or will constitute a violation of any provision of this subtitle (including a regulation under this subtitle) or of any order issued under this subtitle, the Administrator may bring a civil action in a district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining the act or practice, or for an order enforcing compliance with the provision, regulation, or order, and the court shall have jurisdiction over the civil action and, on a showing by the Administrator that the licensee or other person has engaged or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(2) JURISDICTION OVER LICENSEE AND ASSETS OF THE LICENSEE.—In a civil action under subsection (a), the court may, to such extent as the court considers necessary, take exclusive jurisdiction of the licensee and the assets of the licensee, wherever located, and the court shall have jurisdiction to appoint a trustee or receiver to hold or administer the assets of the licensee under the direction of the court.

(3) TRUSTEESHIP OR RECEIVERSHIP OVER LICENSEE.—On request of the Administrator, the court may appoint the Administrator to act as trustee or receiver of the licensee unless the court considers that

such an appointment would be inequitable or otherwise inappropriate by reason of special circumstances involved in the civil action.

§ 30322. Jurisdiction; service of process

A civil action or other proceeding brought under section 30318(b)(4)(C), 30319, 30320, or 30321 of this title by the Administrator to enforce any liability or duty created by, or to enjoin any violation of, this subtitle, or any regulation or order promulgated under this subtitle shall be brought in the district in which the licensee maintains its principal office, and process in such cases may be served in any district in which the defendant maintains its principal office or transacts business, or wherever the defendant may be found.

CHAPTER 305—NEW MARKETS VENTURE CAPITAL COMPANY PROGRAM

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§ 30501. Definitions

In this chapter:

(1) DEVELOPMENTAL VENTURE CAPITAL.—

(A) IN GENERAL.—The term ''developmental venture capital'' means capital in the form of an equity capital investment in a smaller enterprise made with a primary objective of fostering economic development in a low-income geographic area.

(B) EQUITY CAPITAL.—In subparagraph (A), the term ''equity capital'' has the meaning given the term in section 30304(g)(1)(B) of this title.

(2) ELIGIBLE COMPANY.—The term ''eligible company'' means a company that—

(A) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(B) has a management team with experience in community development financing or relevant venture capital financing; and

(C) has a primary objective of economic development of one or more low-income geographic areas.

(3) LOW-INCOME INDIVIDUAL.—The term ''low-income individual'' means an individual whose income (adjusted for family size) does not exceed—

(A) in the case of an individual residing in a metropolitan area, 80 percent of the median income of all individuals residing in the metropolitan area; and

(B) in the case of an individual residing in a nonmetropolitan area, the greater of—

(i) 80 percent of the median income of all individuals residing in the nonmetropolitan area; or

(ii) 80 percent of the median income of all individuals residing in all of the nonmetropolitan areas in the State in which the individual resides.

(4) NEW MARKETS VENTURE CAPITAL COMPANY.—The term ''new markets venture capital company'' means a company that—

(A) has been granted final approval by the Administrator under section 30503(c) of this title; and

(B) has entered into a participation agreement with the Administrator.

(5) OPERATIONAL ASSISTANCE.—The term ''operational assistance'' means management, marketing, and other technical assistance that assists a smaller enterprise with business development.

(6) PARTICIPATION AGREEMENT.—The term ''participation agreement'' means a participation agreement under section 30503(b)(4)(D) of this title.

(7) PROGRAM.—The term ''program'' means the new markets venture capital company program.

(8) STATE.—The term ''State'' means a State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

§ 30502. Establishment of program

(a) IN GENERAL.—The Administrator shall establish a developmental venture capital program to be known as the new markets venture capital company program—

(1) with the purpose of promoting economic development and creating wealth and job opportunities in low-income geographic areas and among individuals living in low-income geographic areas by encouraging developmental venture capital investments in smaller enterprises primarily located in low-income geographic areas; and

(2) with the mission of addressing the unmet equity investment needs of smaller enterprises located in low-income geographic areas.

(b) ACTIVITIES.—Under the program, the Administrator may—

(1) enter into participation agreements with new markets venture capital companies under section 30503(b)(4)(D) of this title for the purposes described in subsection (a);

(2) guarantee debentures issued by new markets venture capital companies under section 30504 of this title; and

(3) make grants to new markets venture capital companies and specialized small business investment companies under section 30507 of this title.

§ 30503. Approval of new markets venture capital companies

(a) APPLICATION.—To participate in the program as a new markets venture capital company, an eligible company shall submit to the Administrator an application that includes—

(1) a business plan describing how the applicant intends to make successful developmental venture capital investments in identified low-income geographic areas;

(2) information regarding the community development finance or relevant venture capital qualifications and general reputation of the applicant's management;

(3) a description of how the applicant intends to work with community organizations and to seek to address the unmet capital needs of the communities served;

(4) a proposal describing how the applicant intends to use the grant funds provided under this chapter to provide operational assistance to smaller enterprises financed by the applicant, including information regarding whether the applicant intends to use licensed professionals, when necessary, on the applicant's staff or from an outside entity;

(5) with respect to binding commitments to be made to the applicant under this chapter, an estimate of the ratio of cash to in-kind contributions;

(6) a description of the criteria to be used to evaluate whether and to what extent the applicant meets the objectives of the program;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the applicant's business plan; and

(8) such other information as the Administrator may require.

(b) CONDITIONAL APPROVAL.—

(1) IN GENERAL.—From among eligible companies submitting applications under subsection (a), the Administrator shall conditionally approve applicants to participate in the program.

(2) SELECTION CRITERIA.—In conditionally approving eligible companies under paragraph (1), the Administrator shall consider—

(A) the likelihood that an applicant will meet the goal of its business plan;

(B) the experience and background of an applicant's management team;

(C) the need for developmental venture capital investments in the geographic areas in which an applicant intends to invest;

(D) the extent to which an applicant will concentrate its activities on serving the geographic areas in which the applicant intends to invest;

(E) the likelihood that an applicant will be able to satisfy the conditions under paragraph (4);

(F) the extent to which the activities proposed by an applicant will expand economic opportunities in the geographic areas in which the applicant intends to invest;

(G) the strength of the applicant's proposal to provide operational assistance as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or by contractors; and

(H) any other factor that the Administrator considers appropriate.

(3) NATIONWIDE DISTRIBUTION.—The Administrator shall select applicants under paragraph (1) in a manner that promotes investment nationwide.

(4) REQUIREMENTS FOR FINAL APPROVAL.—

(A) SPECIFICATION OF DATE.—On granting conditional approval of an applicant, the Administrator shall specify a date, not to exceed the date that is 2 years after the date of conditional approval, by which the conditionally approved applicant shall satisfy the requirements stated in this paragraph.

(B) CAPITAL REQUIREMENT.—A conditionally approved applicant shall raise not less than $5,000,000 of private capital or binding capital commitments from one or more investors (other than Federal agencies) that meet criteria established by the Administrator.

(C) NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.—

(i) IN GENERAL.—To provide operational assistance to smaller enterprises expected to be financed by a conditionally approved applicant, the conditionally approved applicant—

(I) shall have binding commitments (for contribution in cash or in kind)—

(aa) from any sources other than the Administrator that meet criteria established by the Administrator;

(bb) payable or available over a multiyear period that the Administrator considers appropriate (not to exceed 10 years); and

(cc) in an amount that is not less than 30 percent of the total amount of capital and commitments raised under subparagraph (B);

(II) shall have purchased from an insurance company acceptable to the Administrator, using funds (other than the funds raised under subparagraph (B)) from any source other than the Administrator, an annuity that yields cash payments over a multiyear period acceptable to the Administrator (not to exceed 10 years) in an amount that is not less than 30 percent of the total amount of capital and commitments raised under subparagraph (B); or

(III) shall have binding commitments (for contributions in cash or in kind) of the type described in subclause (I) and shall have purchased an annuity of the type described in subclause (II), which in the aggregate make available, over a multiyear period acceptable to the Administrator (not to exceed 10 years), an amount that is not less than 30 percent of the total amount of capital and commitments raised under subparagraph (B).

(ii) EXCEPTION.—On a showing of special circumstances and good cause, the Administrator may consider an applicant to satisfy the requirements of clause (i) if the applicant has—

(I) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under clause (i); and

(II) binding commitments in an amount that is equal to not less than 20 percent of the amount required under clause (i).

(iii) LIMITATION.—To comply with the requirements of clauses (i) and (ii), the amount of in-kind contributions made by a conditionally approved applicant shall not exceed 50 percent of the total contributions made by the conditionally approved applicant.

(D) PARTICIPATION AGREEMENT.—A conditionally approved applicant shall enter into a participation agreement with the Administrator that—

(i) details the conditionally approved applicant's operating plan and investment criteria; and

(ii) requires the conditionally approved applicant, after final approval under subsection (c), to make investments in smaller enterprises at least 80 percent of which are located in low-income geographic areas.

(c) FINAL APPROVAL.—The Administrator shall—

(1) grant final approval to a conditionally approved applicant to operate as a new markets venture capital company if the conditionally approved applicant satisfies the requirements of paragraph (4) of subsection (b) on or before the expiration of the date specified under subparagraph (A) of that paragraph; or

(2) if the conditionally approved applicant fails to satisfy those requirements on or before the expiration of that date, revoke the conditional approval granted under subsection (b).

§ 30504. Guarantee of new markets venture capital company debentures

(a) IN GENERAL.—To enable a new markets venture capital company to make developmental venture capital investments in smaller enterprises in a low-income geographic area, the Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by the new markets venture capital company.

(b) TERMS AND CONDITIONS.—The Administrator may make a guarantee under this section on such terms and conditions as the Administrator considers appropriate, except that the term of any debenture guaranteed under this section shall not exceed 15 years.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this chapter.

(d) MAXIMUM AMOUNT OF GUARANTEE.—

(1) IN GENERAL.—The Administrator may guarantee the debentures issued by a new markets venture capital company only to the extent that the total face amount of outstanding guaranteed debentures of the new markets venture capital company does not exceed 150 percent of the private capital of the new markets venture capital company, as determined by the Administrator.

(2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For purposes of paragraph (1), private capital may include capital that is considered to be Federal funds (within the meaning of section 30101(15)(C)(iii) of this title) if the capital is contributed by an investor other than a Federal agency.

§ 30505. Trust certificates

(a) ISSUANCE.—

(1) IN GENERAL.—The Administrator, acting directly or through an agent, may issue trust certificates representing ownership of all or a fractional part of debentures issued by a new markets venture capital company and guaranteed by the Administrator under section 30504 of this title.

(2) TRUST OR POOL.—Trust certificates issued under paragraph (1) shall be based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) GUARANTEE.—

(1) IN GENERAL.—The Administrator may, under such terms and conditions as the Administrator considers appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or an agent of the Administrator under this section.

(2) LIMITATION.—A guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) PREPAYMENT OR DEFAULT.—

(A) IN GENERAL.—In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, 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 that the prepaid debenture represents in the trust or pool.

(B) INTEREST PERIOD.—Interest on a prepaid or defaulted debenture shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee.

(C) CALL.—At any time during the term of a trust certificate, a trust certificate may be called for redemption due to prepayment or default of all debentures that compose the trust or pool.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or an agent of the Administrator under this section.

(d) FEES.—The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but an agent of the Administrator may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) SUBROGATION AND OWNERSHIP RIGHTS.—

(1) SUBROGATION.—If the Administrator pays a claim under a guarantee issued under this section, the Administrator shall be subrogated fully to the rights satisfied by the payment.

(2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by the Administrator of the ownership rights of the Administrator in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) MANAGEMENT AND ADMINISTRATION.—

(1) REGISTRATION.—The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) CONTRACTING OF FUNCTIONS.—

(A) IN GENERAL.—The Administrator may contract with one or more agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under section 30504 of this title; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) FIDELITY BOND OR INSURANCE REQUIREMENT.—An agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) FORM OF REGISTRATION.—This subsection does not preclude the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

§ 30506. Fees

Except as provided in section 30505(d) of this title, the Administrator may charge such fees as the Administrator considers appropriate with respect to any guarantee or grant issued under this chapter.

§ 30507. Operational assistance grants

(a) IN GENERAL.—

(1) AUTHORITY.—The Administrator may make a grant to a new markets venture capital company or specialized small business investment company to enable the new markets venture capital company or specialized small business investment company to provide operational assistance to smaller enterprises financed, or expected to be financed, by the new markets venture capital company or specialized small business investment company.

(2) TERMS.—A grant under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—

(A) SUBMISSION OF PLAN.—A specialized small business investment company shall be eligible for a grant under this section only if the specialized small business investment company submits to the Administrator, in such form and manner as the Administrator may require, a plan for use of the grant.

(B) USE OF FUNDS.—The proceeds of a grant made to a specialized small business investment company under this subsection shall be used by the specialized small business investment company only to provide operational assistance in connection with an equity investment made with capital raised after December 21, 2000, in a smaller enterprise located in a low-income geographic area.

(4) GRANT AMOUNT.—

(A) NEW MARKETS VENTURE CAPITAL COMPANIES.—The amount of a grant made under this subsection to a new markets venture capital company shall be equal to the amount of resources (in cash or in kind) raised by the new markets venture capital company under section 30503(b)(4)(B) of this title.

(B) SPECIALIZED SMALL BUSINESS INVESTMENT COMPANIES.—The amount of a grant made under this subsection to a specialized small business investment company shall be equal to the resources (in cash or in kind) raised by the entity in accordance with the requirements applicable to new markets venture capital companies under section 305053(b)(4)(C) of this title.

(5) PRO RATA REDUCTIONS.—If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (4), the Administrator shall make pro rata reductions in the amounts otherwise payable to each new markets venture capital company and specialized small business investment company under that paragraph.

(b) SUPPLEMENTAL GRANTS.—

(1) IN GENERAL.—The Administrator may make a supplemental grant to a new markets venture capital company or specialized small business investment company under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the new markets venture capital company or specialized small business investment company.

(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of a supplemental grant under this subsection, that the new markets venture capital company or specialized small business investment company receiving the grant provide from resources (in cash or in kind), other than those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a new markets venture capital company or a specialized small business investment company.

§ 30508. Bank participation

(a) IN GENERAL.—Except as provided in subsection (b), a national bank, a member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) an insured bank that is not a member of the Federal Reserve System may invest in a new markets venture capital company or in an entity established to invest solely in new markets venture capital companies.

(b) LIMITATION.—A bank described in subsection (a) shall not make investments described in that subsection in a total amount that is greater than 5 percent of the capital and surplus of the bank.

§ 30509. Reporting requirement

A new markets venture capital company that participates in the program shall provide the Administrator such information as the Administrator may require, including—

(1) information relating to the measurement criteria that the new markets venture capital company proposed in its program application; and

(2) in each case in which the new markets venture capital company makes, under this chapter, an investment in, or a loan or grant to, a business that is not located in a low-income geographic area, a report on the number and percentage of employees of the business who reside in a low-income geographic area.

§ 30510. Regulations

The Administrator may issue such regulations as the Administrator considers necessary to carry out this chapter.

§ 30511. Unlawful acts and omissions

(a) PERSONS DEEMED TO COMMIT VIOLATION.—If a new markets venture capital company violates any provision of this subtitle (including a regulation issued under this subtitle) or of a participation agreement by reason of the new markets venture capital company's failure to comply with terms of this subtitle (including a regulation) or of the participation agreement, or by reason of the new markets venture capital company's engaging in any act or practice that constitutes or will constitute a violation of this subtitle (including a regulation) or of the participation agreement, the violation shall also be deemed to be a violation and an unlawful act committed by any person that, directly or indirectly, authorizes, orders, participates in, causes, brings about, counsels, aids, or abets in the commission of the act, practice, or transaction that constitutes or will constitute, in whole or in part, the violation.

(b) BREACH OF FIDUCIARY DUTY.—It shall be unlawful for an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a new markets venture capital company to engage in any act or practice, or to omit any act or practice, in breach of the person's fiduciary duty as officer, director, employee, agent, or participant if, as a result of the act, practice, or omission, the new markets venture capital company suffers or is in imminent danger of suffering financial loss or other damage.

(c) OTHER UNLAWFUL ACTS.—Except with the written consent of the Administrator, it shall be unlawful—

(1) for any person to take office as an officer, director, or employee of a new markets venture capital company, or to become an agent or

participant in the conduct of the affairs or management of a new markets venture capital company, if the person—

(A) has been convicted of—

(i) a felony; or

(ii) any other criminal offense involving dishonesty or breach of trust; or

(B) has been found civilly liable in damages, or has been permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust; or

(2) for any person to continue to serve in any of the capacities described in paragraph (1), if—

(A) the person is convicted of—

(i) a felony; or

(ii) any other criminal offense involving dishonesty or breach of trust; or

(B) the person is found civilly liable in damages, or is permanently or temporarily enjoined by an order, judgment, or decree of a court of competent jurisdiction, by reason of any act or practice involving fraud or breach of trust.

§ 30512. Examinations

(a) IN GENERAL.—A new markets venture capital company that participates in the program shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section and modeled after oversight developed for the small business investment company program.

(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such an examination.

(c) COSTS.—

(1) IN GENERAL.—The Administrator may assess the cost of an examination under this section (including compensation of an examiner) against the new markets venture capital company examined.

(2) PAYMENT.—A new markets venture capital company against which the Administrator assesses costs under this paragraph shall pay the costs.

(d) DEPOSIT OF AMOUNTS.—Amounts collected under this section shall be deposited in the account for salaries and expenses of the Administration.

§ 30513. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee under section 30320 of this title (to the extent that those procedures are not inconsistent with the requirements of this chapter), the Administrator may remove or suspend a director or officer of a new markets venture capital company.

§ 30514. Direct civil enforcement actions

(a) FORFEITURE OF RIGHTS AND PRIVILEGES.—

(1) IN GENERAL.—With respect to a new markets venture capital company that violates or fails to comply with any of the provisions of this subtitle (including a regulation issued under this subtitle) or of any participation agreement, the Administrator may—

(A) void the participation agreement between the Administrator and the new markets venture capital company; and

(B) cause the new markets venture capital company to forfeit all of the rights and privileges derived by the new markets venture capital company from this subtitle.

(2) ADJUDICATION OF NONCOMPLIANCE.—

(A) IN GENERAL.—Before the Administrator may cause a new markets venture capital company to forfeit rights or privileges under paragraph (1), a court of the United States of competent jurisdiction shall find that the new markets venture capital company committed a violation, or failed to comply, in a civil action brought for that purpose in the district, territory, or other place subject to the jurisdiction of the United States in which the principal office of the new markets venture capital company is located.

(B) PARTIES AUTHORIZED TO BRING CIVIL ACTION.—A civil action brought by the United States under this subsection shall be brought by the Administrator or by the Attorney General.

(b) INJUNCTIONS AND OTHER ORDERS.—

(1) IN GENERAL.—If a new markets venture capital company or any other person engages or is about to engage in an act or practice that constitutes or will constitute a violation of any provision of this subtitle (including a regulation under this subtitle) or of any order issued under this subtitle, the Administrator may bring a civil action in a district court of the United States or a United States court of any place subject to the jurisdiction of the United States for an order enjoining the act or practice, or for an order enforcing compliance with the provision, regulation, or order, and the court shall have jurisdiction over the civil action and, on a showing by the Administrator that the new markets venture capital company or other person has engaged or is about to

engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

(2) JURISDICTION OVER NEW MARKETS VENTURE CAPITAL COMPANY AND ITS ASSETS.—In a civil action under paragraph (1), the court may, to such extent as the court considers necessary, take exclusive jurisdiction of the new markets venture capital company and the assets of the new markets venture capital company, wherever located, and the court shall have jurisdiction to appoint a trustee or receiver to hold or administer the assets of the new markets venture capital company under the direction of the court.

(3) TRUSTEESHIP OR RECEIVERSHIP OVER NEW MARKETS VENTURE CAPITAL COMPANY.—On request of the Administrator, the court may appoint the Administrator to act as trustee or receiver of the new markets venture capital company unless the court considers that such an appointment would be inequitable or otherwise inappropriate by reason of special circumstances involved in the civil action.

CHAPTER 307—RENEWABLE FUEL CAPITAL INVESTMENT PILOT PROGRAM

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30712. Conflicts of interest; unlawful acts and omissions by officers, directors, employees, and agents; revocation and suspensions of licenses; cease and desist orders; injunctions and other orders.
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30714. Termination.

§ 30701. Definitions

In this chapter:

(1) ELIGIBLE COMPANY.—The term ''eligible company'' means a company that—

(A) is a newly formed for-profit entity or a newly formed for-profit subsidiary of an existing entity;

(B) has a management team with experience in alternative energy financing or relevant venture capital financing; and

(C) has a primary objective of investment in smaller enterprises that research, manufacture, develop, produce, or bring to market goods, products, or services that generate or support the production of renewable energy.

(2) OPERATIONAL ASSISTANCE.—The term ''operational assistance'' means management, marketing, and other technical assistance that assists a smaller enterprise with business development.

(3) PARTICIPATION AGREEMENT.—The term ''participation agreement'' means a participation agreement under section 30703(b)(4)(D) of this title.

(4) PROGRAM.—The term ''program'' means the renewable fuel capital investment pilot program.

(5) RENEWABLE ENERGY.—The term 'renewable energy' means energy derived from resources that are regenerative or that cannot be depleted, including solar, wind, ethanol, and biodiesel fuels.

(6) RENEWABLE FUEL CAPITAL INVESTMENT COMPANY.—The term ''renewable fuel capital investment company'' means a company—

(A) that—

(i) has been granted final approval by the Administrator under section 30703(e) of this title; and

(ii) has entered into a participation agreement with the Administrator; or

(B) that has received conditional approval under section 30703(b) of this title.

(7) STATE.—The term ''State'' means a State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other commonwealth, territory, or possession of the United States.

(8) VENTURE CAPITAL.—The term ''venture capital'' means capital in the form of equity capital (as defined in section 30304(g)(1)(B) of this title) investments.

§ 30702. Establishment of program

(a) IN GENERAL.—The Administrator shall establish a renewable fuel capital investment program—

(1) with the purpose of promoting the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy by encouraging venture capital investments in smaller enterprises primarily engaged such activities; and

(2) with the mission of addressing the unmet equity investment needs of smaller enterprises engaged in researching, developing, manufacturing, producing, and bringing to market goods, products, or services that generate or support the production of renewable energy.

(b) ACTIVITIES.—Under the program, the Administrator may—

(1) enter into participation agreements with renewable fuel capital investment companies under section 30703(b)(4)(D) of this title for the purposes described in subsection (a);

(2) guarantee debentures issued by renewable fuel capital investment companies under section 30704 of this title; and

(3) make grants to renewable fuel investment capital companies under section 30707 of this title.

§ 30703. Approval of renewable fuel capital investment companies

(a) APPLICATION.—An eligible company desiring to be designated as a renewable fuel capital investment company shall submit to the Administrator an application that includes—

(1) a business plan describing how the applicant intends to make successful venture capital investments in smaller enterprises primarily engaged in the research, manufacture, development, production, or bringing to market of goods, products, or services that generate or support the production of renewable energy;

(2) information regarding the relevant venture capital qualifications and general reputation of the applicant's management;

(3) a description of how the applicant intends to seek to address the unmet capital needs of the smaller enterprises served;

(4) a proposal describing how the applicant intends to use the grant funds provided under this chapter to provide operational assistance to smaller enterprises financed by the applicant, including information regarding whether the applicant has employees with appropriate professional licenses or will contract with another entity when the services of such an individual are necessary;

(5) with respect to binding commitments to be made to the applicant under this chapter, an estimate of the ratio of cash to in-kind contributions;

(6) a description of whether and to what extent the applicant meets the criteria under subsection (b)(2) and the objectives of the program;

(7) information regarding the management and financial strength of any parent firm, affiliated firm, or any other firm essential to the success of the applicant's business plan; and

(8) such other information as the Administrator may require.

(b) CONDITIONAL APPROVAL.—

(1) IN GENERAL.—From among eligible companies submitting applications under subsection (a), the Administrator shall conditionally approve applicants to operate as renewable fuel capital investment companies.

(2) SELECTION CRITERIA.—In conditionally approving companies under paragraph (1), the Administrator shall consider—

(A) the likelihood that an applicant will meet the goal of its business plan;

(B) the experience and background of an applicant's management team;

(C) the need for venture capital investments in the geographic areas in which an applicant intends to invest;

(D) the extent to which an applicant will concentrate its activities on serving the geographic areas in which the applicant intends to invest;

(E) the likelihood that an applicant will be able to satisfy the conditions under paragraph (4);

(F) the extent to which the activities proposed by the applicant will expand economic opportunities in the geographic areas in which the company intends to invest;

(G) the strength of the applicant's proposal to provide operational assistance as the proposal relates to the ability of the applicant to meet applicable cash requirements and properly use in-kind contributions, including the use of resources for the services of licensed professionals, when necessary, whether provided by employees or by contractors; and

(H) any other factor that the Administrator considers appropriate.

(3) NATIONWIDE DISTRIBUTION.—From among eligible companies submitting applications under subsection (a), the Administrator shall consider the selection criteria under paragraph (2) and shall, to the maximum extent practicable, approve at least one applicant from each geographic region of the Administration.

(4) REQUIREMENTS FOR FINAL APPROVAL.—

(A) IN GENERAL.—On granting conditional approval of an applicant, the Administrator shall grant each conditionally approved applicant 2 years to satisfy the requirements stated in this paragraph.

(B) CAPITAL REQUIREMENT.—A conditionally approved applicant shall raise not less than $3,000,000 of private capital or binding capital commitments from one or more investors (other than Federal agencies) that meet criteria established by the Administrator.

(C) NONADMINISTRATION RESOURCES FOR OPERATIONAL ASSISTANCE.—

(i) IN GENERAL.—To provide operational assistance to smaller enterprises expected to be financed by the applicant, a conditionally approved applicant shall have binding commitments (for contribution in cash or in-kind)—

(I) from any source other than the Administrator that meet criteria established by the Administrator; and

(II) payable or available over a multiyear period that the Administrator considers appropriate (not to exceed 10 years).

(ii) EXCEPTION.—On a showing of special circumstances and good cause, the Administrator may consider an applicant to satisfy the requirements of clause (i) if the applicant has—

(I) a viable plan that reasonably projects the capacity of the applicant to raise the amount (in cash or in-kind) required under clause (i); and

(II) binding commitments in an amount that is equal to not less than 20 percent of the amount required under clause (i).

(iii) LIMITATION.—To comply with the requirements of clauses (i) and (ii), the amount of in-kind contributions made by a conditionally approved applicant shall not exceed 50 percent of the total contributions made by the conditionally approved applicant.

(D) PARTICIPATION AGREEMENT.—A conditionally approved applicant shall enter into a participation agreement with the Administrator that—

(i) details the conditionally approved applicant's operating plan and investment criteria; and

(ii) requires the conditionally approved applicant, after final approval under subsection (c), to make investments in smaller enterprises primarily engaged in researching, manufacturing, developing, producing, or bringing to market goods, products, or services that generate or support the production of renewable energy.

(c) FINAL APPROVAL.—The Administrator shall, with respect to each applicant conditionally approved under subsection (c)—

(1) grant final approval to the conditionally approved applicant to operate as a renewable fuel capital investment company if the conditionally approved applicant satisfies the requirements of paragraph (4) of subsection (b) on or before the expiration of the time period described in that subsection; or

(2) if the conditionally approved applicant fails to satisfy those requirements on or before the expiration of that time period, revoke the conditional approval granted under subsection (b).

§ 30704. Guarantee of renewable fuel capital investment company debentures

(a) IN GENERAL.—To enable a renewable fuel capital investment company to make venture capital investments in smaller enterprises engaged in the research, development, manufacture, production, and bringing to market of goods, products, or services that generate or support the production of renewable energy, the Administrator may guarantee the timely payment of principal and interest, as scheduled, on debentures issued by the renewable fuel capital investment company.

(b) TERMS AND CONDITIONS.—The Administrator may make a guarantee under this section on such terms and conditions as the Administrator considers appropriate, except that—

(1) the term of any debenture guaranteed under this section shall not exceed 15 years; and

(2) a debenture guaranteed under this section—

(A) shall carry no front-end or annual fees;

(B) shall be issued at a discount;

(C) shall require no interest payments during the 5-year period beginning on the date on which the debenture is issued;

(D) shall be prepayable without penalty after the end of the one-year period beginning on the date on which the debenture is issued; and

(E) shall require semiannual interest payments after the period described in subparagraph (C).

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee under this chapter.

(d) MAXIMUM AMOUNT OF GUARANTEE.—

(1) IN GENERAL.—The Administrator may guarantee the debentures issued by a renewable fuel capital investment company only to the extent that the total face amount of outstanding guaranteed debentures of the renewable fuel capital investment company does not exceed 150 percent of the private capital of the renewable fuel capital investment company, as determined by the Administrator.

(2) TREATMENT OF CERTAIN FEDERAL FUNDS.—For purposes of paragraph (1), private capital may include capital that is considered to be Federal funds (within the meaning of section 30101(15)(C)(iii) of

this title) if the capital is contributed by an investor other than a Federal agency.

§ 30705. Trust certificates

(a) ISSUANCE.—

(1) IN GENERAL.—The Administrator, acting directly or through an agent, may issue trust certificates representing ownership of all or a fractional part of debentures issued by a renewable fuel capital investment company and guaranteed by the Administrator under section 30704 of this title.

(2) TRUST OR POOL.—Trust certificates issued under paragraph (1) shall be based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) GUARANTEE.—

(1) IN GENERAL.—The Administrator may, under such terms and conditions as the Administrator considers appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator or an agent of the Administrator under this section.

(2) LIMITATION.—A guarantee under this subsection shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) PREPAYMENT OR DEFAULT.—

(A) IN GENERAL.—In the event that a debenture in a trust or pool is prepaid, or in the event of default of such a debenture, 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 that the prepaid debenture represents in the trust or pool.

(B) INTEREST PERIOD.—Interest on a prepaid or defaulted debenture shall accrue and be guaranteed by the Administrator only through the date of payment of the guarantee.

(C) CALL.—At any time during the term of a trust certificate, a trust certificate may be called for redemption due to prepayment or default of all debentures that compose the trust or pool.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to pay all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator or an agent of the Administrator under this section.

(d) FEES.—The Administrator shall not collect a fee for any guarantee of a trust certificate under this section, but an agent of the Administrator

may collect a fee approved by the Administrator for the functions described in subsection (f)(2).

(e) SUBROGATION AND OWNERSHIP RIGHTS.—

(1) SUBROGATION.—If the Administrator pays a claim under a guarantee issued under this section, the Administrator shall be subrogated fully to the rights satisfied by the payment.

(2) OWNERSHIP RIGHTS.—No Federal, State, or local law shall preclude or limit the exercise by the Administrator of the ownership rights of the Administrator in the debentures residing in a trust or pool against which trust certificates are issued under this section.

(f) MANAGEMENT AND ADMINISTRATION.—

(1) REGISTRATION.—The Administrator may provide for a central registration of all trust certificates issued under this section.

(2) CONTRACTING OF FUNCTIONS.—

(A) IN GENERAL.—The Administrator may contract with one or more agents to carry out on behalf of the Administrator the pooling and the central registration functions provided for in this section including, notwithstanding any other provision of law—

(i) maintenance, on behalf of and under the direction of the Administrator, of such commercial bank accounts or investments in obligations of the United States as may be necessary to facilitate the creation of trusts or pools backed by debentures guaranteed under section 30704 of this title; and

(ii) the issuance of trust certificates to facilitate the creation of such trusts or pools.

(B) FIDELITY BOND OR INSURANCE REQUIREMENT.—An agent performing functions on behalf of the Administrator under this paragraph shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the United States.

(3) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates issued under this section.

(4) FORM OF REGISTRATION.—This subsection does not preclude the use of a book-entry or other electronic form of registration for trust certificates issued under this section.

§ 30706. Fees

(a) IN GENERAL.—Except as provided in section 30705(d) of this title, the Administrator may charge such fees as the Administrator considers appropriate with respect to any guarantee or grant issued under this chapter, in an amount established annually by the Administrator, as necessary to re-

duce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing debentures under this chapter, which amounts shall be paid to and retained by the Administrator.

(b) OFFSET.—The Administrator may, as provided by subsection (c), offset fees charged and collected under subsection (a).

(c) FEE CONTRIBUTION.—

(1) IN GENERAL.—To the extent that amounts are made available to the Administrator for the purpose of fee contributions, the Administrator shall contribute to fees paid by the renewable fuel capital investment companies under subsection (a).

(2) ANNUAL ADJUSTMENT.—Each fee contribution under paragraph (1) shall be effective for one fiscal year and shall be adjusted as necessary for each fiscal year thereafter to ensure that amounts under paragraph (1) are fully used. The fee contribution for a fiscal year shall be based on the outstanding commitments made and the guarantees and grants that the Administrator projects will be made during the fiscal year, given the program level authorized by law for that fiscal year and any other factors that the Administrator considers appropriate.

§ 30707. Operational assistance grants

(a) IN GENERAL.—

(1) AUTHORITY.—The Administrator may make a grant to a renewable fuel capital investment company to enable the renewable fuel capital investment company to provide operational assistance to smaller enterprises financed, or expected to be financed, by the renewable fuel capital investment company.

(2) TERMS.—A grant under this subsection shall be made over a multiyear period not to exceed 10 years, under such other terms as the Administrator may require.

(3) GRANT AMOUNT.—The amount of a grant made under this subsection to a renewable fuel capital investment company shall be equal to the lesser of—

(A) 10 percent of the resources (in cash or in kind) raised by the renewable fuel capital investment company under section 30703(b)(4)(B) of this title; or

(B) $1,000,000.

(4) PRO RATA REDUCTIONS.—If the amount made available to carry out this section is insufficient for the Administrator to provide grants in the amounts provided for in paragraph (3), the Administrator shall

make pro rata reductions in the amounts otherwise payable to each renewable fuel capital investment company under that paragraph.

(5) GRANTS TO CONDITIONALLY APPROVED COMPANIES.—

(A) IN GENERAL.—Subject to subparagraphs (B) and (C), on the request of a renewable fuel capital investment company conditionally approved under section 30703(b) of this title, the Administrator shall make a grant to the renewable fuel capital investment company under this subsection.

(B) REPAYMENT BY RENEWABLE FUEL CAPITAL INVESTMENT COMPANIES NOT FINALLY APPROVED.—If a renewable fuel capital investment company receives a grant under this paragraph and does not enter into a participation agreement for final approval, the renewable fuel capital investment company shall, subject to controlling Federal law, repay the amount of the grant to the Administrator.

(C) DEDUCTION OF GRANT TO APPROVED COMPANY.—If a renewable fuel capital investment company receives a grant under this paragraph and receives final approval under section 30703(c) of this title, the Administrator shall deduct the amount of the grant from the total grant amount that the renewable fuel capital investment company receives for operational assistance.

(D) AMOUNT OF GRANT.—No renewable fuel capital investment company may receive a grant of more than $100,000 under this paragraph.

(b) SUPPLEMENTAL GRANTS.—

(1) IN GENERAL.—The Administrator may make a supplemental grant to a renewable fuel capital investment company under such terms as the Administrator may require, to provide additional operational assistance to smaller enterprises financed, or expected to be financed, by the renewable fuel capital investment company.

(2) MATCHING REQUIREMENT.—The Administrator may require, as a condition of a supplemental grant under this subsection, that the renewable fuel capital investment company receiving the grant provide from resources (in cash or in kind), other than those provided by the Administrator, a matching contribution equal to the amount of the supplemental grant.

(c) LIMITATION.—None of the assistance made available under this section may be used for any overhead or general and administrative expense of a renewable fuel capital investment company.

§ 30708. Bank participation

(a) IN GENERAL.—Except as provided in subsection (b), a national bank, a member bank of the Federal Reserve System, and (to the extent permitted under applicable State law) an insured bank that is not a member of the Federal Reserve System may invest in any renewable fuel capital investment company or in any entity established to invest solely in renewable fuel capital investment companies.

(b) LIMITATION.—A bank described in subsection (a) shall not make investments described in that subsection in a total amount that is greater than 5 percent of the capital and surplus of the bank.

§ 30709. Reporting requirement

A renewable fuel capital investment company that participates in the program shall provide the Administrator such information as the Administrator may require, including—

(1) information relating to the measurement criteria that the renewable fuel capital investment company proposed in its program application; and

(2) in each case in which the renewable fuel capital investment company makes, under this chapter, an investment in, or a loan or a grant to, a business that is not primarily engaged in the research, development, manufacture, or bringing to market or renewable energy sources, a report on the nature, origin, and revenues of the business in which investments are made.

§ 30710. Regulations

The Administrator may issue such regulations as the Administrator considers necessary to carry out this chapter.

§ 30711. Examinations

(a) IN GENERAL.—A renewable fuel capital investment company that participates in the program shall be subject to examinations made at the direction of the Investment Division of the Administration in accordance with this section and modeled after oversight developed for the small business investment company program.

(b) ASSISTANCE OF PRIVATE SECTOR ENTITIES.—An examination under this section may be conducted with the assistance of a private sector entity that has both the qualifications and the expertise necessary to conduct such an examination.

(c) COSTS.—

(1) IN GENERAL.—The Administrator may assess the cost of an examination under this section (including compensation of an examiner) against the renewable fuel capital investment company examined.

(2) PAYMENT.—A renewable fuel capital investment company against which the Administrator assesses costs under this paragraph shall pay the costs.

(d) DEPOSIT OF AMOUNTS.—Amounts collected under this section shall be deposited in the account for salaries and expenses of the Administration.

§ 30712. Conflicts of interest; unlawful acts and omissions; revocation and suspensions of licenses; cease and desist orders; injunctions and other orders

(a) ACTIONS AND PROCEDURES UNDER OTHER PROVISIONS.—To the extent that the actions and procedures described in sections 30313, 30317, 30319, and 30321(b) of this title are not inconsistent with the requirements of this chapter, the Administrator may take those actions under those procedures in carrying out this chapter.

(b) APPLICABILITY OF REQUIREMENTS UNDER OTHER PROVISIONS.—To the extent that the requirements described in sections 30313, 30317, 30319, and 30321(b) of this title are not inconsistent with the requirements of this chapter, an officer, director, employee, agent, or other participant in the management or conduct of the affairs of a renewable fuel capital investment company shall be subject to the requirements of sections 30313, 30317, 30319, and 30321(b) of this title.

§ 30713. Removal or suspension of directors or officers

Using the procedures for removing or suspending a director or an officer of a licensee under section 30320 of this title (to the extent that those procedures are not inconsistent with the requirements of this chapter), the Administrator may remove or suspend a director or officer of a renewable fuel capital investment company.

§ 30714. Termination

The program shall terminate at the end of the second full fiscal year after the date on which the Administrator establishes the program.

DIVISION C—SURETY BOND GUARANTEE PROGRAM

CHAPTER 321—SURETY BOND GUARANTEE PROGRAM

Sec.
32101. Definitions.
32102. Surety bond guarantees and indemnification agreements.
32103. Surety bond guarantee fund.

§ 32101. Definitions

In this chapter:

(1) BID BOND.—The term ''bid bond'' means a bond conditioned on the bidder on a contract—

(A) entering into the contract, if the bidder receives the award of the contract; and

(B) furnishing the prescribed payment bond and performance bond.

(2) BOND.—Except in paragraphs (1), (7), and (8), the term ''bond'' means—

(A) a bid bond;

(B) a payment bond;

(C) a performance bond; and

(D) a bond that is ancillary to a bid bond, payment bond, or performance bond.

(3) GUARANTEE.—The term ''guarantee'' means a guarantee of a bond issued under section 32102(a) of this title.

(4) INDEMNIFICATION AGREEMENT.—The term ''indemnification agreement'' means an agreement entered into between the Administrator and a participating surety under section 32102(b) of this title.

(5) OBLIGEE.—The term ''obligee'' means—

(A) in the case of a bid bond, the person requesting bids for the performance of a contract; or

(B) in the case of a payment bond or performance bond, the person that has contracted with a principal for the completion of the contract and to which the obligation of the surety runs in the event of a breach by the principal of a condition of a payment bond or performance bond.

(6) PARTICIPATING SURETY.—

(A) IN GENERAL.—The term ''participating surety'' means a surety to which a guarantee or commitment to guarantee is issued under section 32102(a)(1) of this title.

(B) INCLUSION.—The term ''participating surety'' includes a preferred surety.

(7) PAYMENT BOND.—The term ''payment bond'' means a bond conditioned on the payment by the principal of money to persons under contract with the principal.

(8) PERFORMANCE BOND.—The term ''performance bond'' means a bond conditioned on the completion by the principal of a contract in accordance with the terms of the contract.

(9) PREFERRED SURETY.—The term ''preferred surety'' means a participating surety that is a participant in the preferred surety bond guarantee program.

(10) PREFERRED SURETY BOND GUARANTEE PROGRAM.—The term ''preferred surety bond guarantee program'' means the program under section 32102(a)(4) of this title.

(11) PRIME CONTRACTOR.—The term ''prime contractor'' means the person with whom the obligee has contracted to perform the contract.

(12) PRINCIPAL.—

(A) IN GENERAL.—The term ''principal'' means—

(i) in the case of a bid bond, a person that bids for the award of a contract; or

(ii) the person—

(I) that is primarily liable to complete a contract for the obligee or to make a payment to another person in respect of the contract; and

(II) for whose performance of the person's obligation the surety is bound under the terms of a payment bond or performance bond.

(B) PRIME CONTRACTOR OR SUBCONTRACTOR.—A principal may be a prime contractor or a subcontractor.

(13) PROGRAM.—The term ''program'' means the surety bond guarantee program.

(14) SUBCONTRACTOR.—The term ''subcontractor'' means a person that contracts with a prime contractor or with another subcontractor to perform a contract.

(15) SURETY.—The term ''surety'' means a person that—

(A) under the terms of a bid bond, undertakes to pay a sum of money to the obligee if the principal breaches the conditions of the bond;

(B) under the terms of a performance bond, undertakes to incur the cost of fulfilling the terms of a contract if the principal breaches the conditions of the contract;

(C) under the terms of a payment bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the contract if the principal fails to make prompt payment; or

(D) is an agent, independent agent, underwriter, or any other person authorized to act on behalf of a person described in subparagraph (A), (B), or (C).

§ 32102. Surety bond guarantees and indemnification agreements

(a) GUARANTEE OF SURETY AGAINST LOSS FROM PRINCIPAL'S BREACH OF BOND.—

(1) IN GENERAL.—The Administrator may, on such terms and conditions as the Administrator may prescribe, guarantee and enter into commitments to guarantee a surety against loss resulting from a

breach of the terms of a bond by a principal on any total work order or contract amount that at the time of bond execution does not exceed $2,000,000.

(2) TERMS AND CONDITIONS.—The terms and conditions of guarantees and commitments under paragraph (1) may vary from surety to surety on the basis of the Administrator's experience with the particular surety.

(3) ELIGIBILITY.—A guarantee of a bond shall not be issued under paragraph (1) unless—

(A) the person that would be principal under the bond is a small business concern;

(B) the bond is required for the person to bid on a contract or to serve as a prime contractor or subcontractor on a contract;

(C) the person is not able to obtain the bond on reasonable terms and conditions without a guarantee under this section; and

(D)(i) there is a reasonable expectation that the principal will perform the covenants and conditions of the contract with respect to which the bond is required; and

(ii) the terms and conditions of the bond are reasonable in the light of the risks involved and the extent of the surety's participation.

(4) PREFERRED SURETY BOND GUARANTEE PROGRAM.—

(A) IN GENERAL.—The Administrator may authorize a surety, without further approval by the Administrator, to issue, monitor, and service bonds that are subject to a guarantee under paragraph (1).

(B) ACTION BY THE ADMINISTRATOR.—The Administrator shall promptly act on an application from a surety to participate in the preferred surety bond guarantee program, in accordance with criteria and procedures established in regulations under subsection (d).

(C) REDUCTION OF ALLOTMENT; TERMINATION.—The Administrator may reduce the allotment of bond guarantee authority or terminate the participation of a preferred surety based on the rate of participation of the preferred surety during the 4 most recent fiscal year quarters compared with the median rate of participation by the other preferred sureties.

(b) INDEMNIFICATION OF PARTICIPATING SURETY AGAINST LOSS FROM AVOIDING BREACH.—

(1) IN GENERAL.—In connection with the issuance of a guarantee to a surety, the Administrator may enter into an indemnification agree-

ment with a participating surety to indemnify the participating surety against a loss sustained by the participating surety in avoiding or attempting to avoid a breach of the terms of a bond guaranteed by the Administrator under subsection (a).

(2) DETERMINATION.—Before making any payment under this subsection, the Administrator shall determine that a breach of the terms of the bond was imminent.

(3) APPROVAL.—A participating surety shall obtain approval from the Administrator before making any payments under this subsection unless the participating surety is a preferred surety.

(4) LIMITATION ON AMOUNT OF PAYMENT.—

(A) IN GENERAL.—Subject to subparagraph (B), no payment by the Administrator under this subsection shall exceed 10 percent of the contract price unless the Administrator determines that a greater payment should be made as a result of a finding by the Administrator that the participating surety's loss sustained in avoiding or attempting to avoid the breach was necessary and reasonable.

(B) MAXIMUM AMOUNT.—In no event shall the Administrator pay a participating surety under this subsection an amount exceeding the guaranteed share of the bond available to the participating surety under subsection (a).

(c) AMOUNT OF LIABILITY OF THE ADMINISTRATOR.—A guarantee or indemnification agreement shall obligate the Administrator to pay to the participating surety—

(1) in the case of a preferred surety, an amount not to exceed 70 percent of the amount of the loss incurred and paid by the preferred surety; or

(2) in the case of a participating surety other than a preferred surety—

(A) an amount not to exceed 90 percent of the amount of the loss incurred and paid by the participating surety (but in no event may the Administrator make a duplicate payment under subsection (b) or any other provision of this section); or

(B) the amount that is equal to 90 percent of the loss incurred and paid by the participating surety, if—

(i) the total amount of the contract at the time of execution of the bond or bonds is $100,000 or less; or

(ii) the bond was issued to a small business concern owned and controlled by socially and economically disadvantaged individuals or to a qualified HUBZone small business concern.

(d) REGULATIONS.—

(1) IN GENERAL.—The Administrator may prescribe regulations for participating sureties.

(2) CONTENTS.—The regulations under paragraph (1) shall require a participating surety to meet standards established by the Administrator for underwriting, claim practices, and loss ratios.

(e) REIMBURSEMENT OF SURETY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Administrator shall reimburse a participating surety as provided in a guarantee or indemnification agreement.

(2) NO LIABILITY.—The Administrator shall be relieved of all liability under a guarantee or indemnification agreement if—

(A) the participating surety obtained the guarantee or indemnification agreement, or applied for reimbursement, by fraud or material misrepresentation;

(B) the total contract amount at the time of execution of the bond or bonds exceeds $2,000,000;

(C) the participating surety has breached a material term or condition of the guarantee or indemnification agreement; or

(D) the participating surety has substantially violated the regulations prescribed under subsection (d).

(f) REIMBURSEMENT PROCEDURE.—The Administrator may, on such terms and conditions as the Administrator may prescribe, establish a procedure for reimbursing a participating surety for the paid losses of the participating surety billed each month, based on prior monthly payments to the participating surety, with subsequent adjustments after such reimbursement.

(g) REPORTING BY PARTICIPATING SURETIES; AUDITS.—

(1) REPORTING BY PARTICIPATING SURETIES.—A participating surety shall submit reports to the Administrator at such times and in such form as the Administrator may require.

(2) AUDITS.—

(A) IN GENERAL.—The Administrator may at all reasonable times audit, in the offices of a participating surety, all records relevant to the Administration's guarantee, commitments to guarantee, and indemnification agreements issued to or entered into with the participating surety under this section.

(B) PREFERRED SURETY BOND GUARANTEE PROGRAM PARTICIPANTS.—A preferred surety shall be audited at least once every 3 years by examiners selected and approved by the Administrator.

(h) ADMINISTRATIVE PROVISIONS.—The Administrator shall—

(1) administer the program on a prudent and economically justifiable basis; and

(2) establish such fees for small business concerns and premiums for participating sureties as the Administrator considers reasonable and necessary, to be payable at such times and under such conditions as the Administrator may determine.

§ 32103. Surety bond guarantee fund

(a) IN GENERAL.—There is created in the Treasury a separate fund for guarantees, which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purposes of the program.

(b) DEPOSIT OF AMOUNTS RECEIVED BY THE ADMINISTRATOR.—All amounts received by the Administrator (including any money, property, or assets derived by the Administrator from operations in connection with the program) shall be deposited in the fund.

(c) USE OF FUND.—All expenses and payments, excluding administrative expenses, pursuant to operations of the Administrator under the program shall be paid from the fund.

(d) APPROPRIATIONS.—Such sums as may be appropriated to the Fund to carry out the programs authorized by this chapter shall be without fiscal year limitation.

DIVISION D—CERTIFIED DEVELOPMENT COMPANY PROGRAM

CHAPTER 331—CERTIFIED DEVELOPMENT COMPANY PROGRAM

Sec.
33101. Definitions.
33102. Establishment of program.
33103. Debenture guarantees.
33104. Private debenture sales.
33105. Pooling of debentures.
33106. Prohibition of acceptance of funding with certain conditions, priorities, restrictions, or requirements.
33107. Accredited lenders program.
33108. Premier certified lenders program.
33109. Foreclosure and liquidation of loans.

§ 33101. Definitions

In this chapter:

(1) ACCREDITED LENDER.—The term ''accredited lender'' means a qualified development company that is designated as an accredited lender under section 33107 of this title.

(2) CERTIFIED DEVELOPMENT COMPANY.—The term ''certified development company'' means a qualified development company that the Administrator certifies as meeting criteria established under this chapter to receive assistance under the program.

(3) COMMERCIAL LOAN.—The term ''commercial loan'' means a loan from a private source.

(4) DEVELOPMENT COMPANY.—The term ''development company'' means an enterprise that is incorporated under State law with the authority to promote and assist the growth and development of small business concerns in the area covered by the operations of the enterprise.

(5) GUARANTEED DEBENTURE.—The term ''guaranteed debenture'' means a debenture that is guaranteed by the Administrator under the program.

(6) PREMIER CERTIFIED LENDER.—The term ''premier certified lender'' means a certified development company that is designated as a premier certified lender under section 33108 of this title.

(7) PROGRAM.—The term ''program'' means the certified development company program.

(8) PROJECT.—The term ''project'' means a project described in section 33103(a)(1) of this title.

(9) QUALIFIED DEVELOPMENT COMPANY.—

(A) IN GENERAL.—The term ''qualified development company'' means a development company that, as determined by the Administrator, has—

(i) a full-time professional staff;

(ii) professional management ability (including adequate accounting, legal, and business-servicing abilities); and

(iii) a board of directors, or membership, that meets on a regular basis to make management decisions for the development company, including decisions relating to the making and servicing of loans by the development company.

(B) DEVELOPMENT COMPANIES IN A RURAL AREA.—A development company in a rural area that does not satisfy the requirements of clauses (i) and (ii) of subparagraph (A) shall be deemed to satisfy those requirements if the development company contracts with a certified development company that does satisfy those requirements and is located in the same general area to provide the services described in those clauses.

(10) SMALL MANUFACTURER.—The term ''small manufacturer'' means a small business concern—

(A) the primary business of which is classified in sector 31, 32, or 33 of the North American Industry Classification System; and

(B) all of the production facilities of which are located in the United States.

§ 33102. Establishment of program

There is established within the Administration a certified development company program for the purpose of fostering economic development and creating and preserving job opportunities in both urban and rural areas by providing long-term financing for small business concerns.

§ 33103. Debenture guarantees

(a) IN GENERAL.—

(1) AUTHORITY.—The Administrator may guarantee the timely payment of all principal and interest as scheduled on a debenture issued by a certified development company the proceeds of which are used to make a loan to a small business concern to be used for a project for a sound business purpose, approved by the Administrator, of plant acquisition, construction, conversion, or expansion (including land acquisition).

(2) LIMITATION.—The Administrator shall not guarantee a debenture for the purposes of making a loan described in paragraph (1) unless necessary funds for making the loan are not available to the certified development company from a private source on reasonable terms.

(3) TERMS AND CONDITIONS.—A debenture guarantee may be made on such terms and conditions as the Administrator may by regulation determine to be appropriate.

(4) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to the payment of all amounts guaranteed under this subsection.

(5) SUBORDINATION.—A guaranteed debenture may be subordinated by the Administrator to any other debenture, promissory note, or other debt or obligation of the certified development company that issues the debenture.

(b) ELIGIBILITY FOR ASSISTANCE.—

(1) ECONOMIC DEVELOPMENT OBJECTIVES.—

(A) DEFINITIONS.—In subclauses (IX) and (X) of subparagraph (B)(iii), terms have the meanings given the terms under the Leadership in Energy and Environmental Design standard for green building certification, as determined by the Administrator.

(B) ELIGIBILITY.—To be eligible for assistance under the program, a certified development company shall demonstrate that the project to be funded with the proceeds of a guaranteed debenture is directed toward at least one of the following economic development objectives:

(i) JOB CREATION OR RETENTION OBJECTIVE.—The creation of job opportunities within 2 years after completion of

the project, or the retention of jobs attributable to the project, as provided in paragraph (3).

(ii) COMMUNITY ECONOMIC IMPROVEMENT OBJECTIVE.—Improvement of the economy of the local community, such as stimulating other business development in the community, bringing new income into the area, or assisting the community in diversifying and stabilizing its economy.

(iii) PUBLIC POLICY OBJECTIVE.—The achievement of one or more of the following public policy objectives:

(I) Business district revitalization.

(II) Expansion of exports.

(III) Expansion of minority business development or women-owned business development.

(IV) Rural development.

(V) Expansion of small business concerns owned and controlled by veterans, especially small business concerns owned and controlled by service-disabled veterans.

(VI) Enhancement of economic competition, including the advancement of technology, plan retooling, conversion to robotics, and competition with imports.

(VII) Changes necessitated by Federal budget cutbacks, including cutbacks in defense-related industries.

(VIII) Business restructuring arising from Federally mandated standards or policies affecting the environment or the safety and health of employees.

(IX) Reduction of energy consumption by at least 10 percent.

(X) Increased use of sustainable design, including—

(aa) designs that reduce the use of greenhouse gas emitting fossil fuels; and

(bb) low-impact designs to produce buildings that reduce the use of nonrenewable resources and minimize environmental impact.

(XI) Plant, equipment, and process upgrades of renewable energy sources such as—

(aa) the small-scale production of energy for individual buildings or communities consumption, commonly known as micropower; and

(bb) renewable fuels producers, including biodiesel and ethanol producers.

(2) COMMUNITY ECONOMIC IMPROVEMENT OBJECTIVE; PUBLIC POLICY OBJECTIVE.—If eligibility is based on the criteria stated in clause (ii) or (iii) of paragraph (1)(B), the project need not meet the job creation or job preservation criteria developed by the Administrator if the overall portfolio of the development company meets or exceeds those job creation or retention criteria.

(3) JOB CREATION OR RETENTION OBJECTIVE.—

(A) PROJECT STANDARD.—A project meets the job creation or retention objective under paragraph (1)(B)(i)) if the project creates or retains—

(i) one job for every $50,000 guaranteed by the Administrator; or

(ii) in the case of a project of a small manufacturer, one job for every $100,000 guaranteed by the Administrator.

(B) PORTFOLIO STANDARD.—A project need not meet the project standard under subparagraph (A) if—

(i) eligibility of the project is based on the community economic improvement objective under paragraph (1)(B)(ii) or one or more of the public policy objectives under paragraph (1)(B)(iii); and

(ii) after the loan is made for the project, the certified development company's portfolio of outstanding guaranteed debentures, excluding guaranteed debentures for loans to small manufacturers, creates or retains—

(I) one job for every $50,000 guaranteed by the Administrator; or

(II) in the case of a project in Alaska, Hawaii, a State-designated enterprise zone, an empowerment zone, an enterprise community, or labor surplus area, as determined by the Secretary of Labor, or in any other area designated by the Administrator, one job for every $75,000 guaranteed by the Administrator.

(4) WAIVER OF REQUIREMENTS.—

(A) IN GENERAL.—Under regulations prescribed by the Administrator, the Administrator may waive, on a case-by-case basis or by regulation, any requirement of paragraph (3) (other than the requirement that a calculation under paragraph (3)(B)(ii)(II) exclude debentures for loans to small manufacturers).

(B) DOLLAR AMOUNTS.—The Administrator may not, in connection with any waiver under subparagraph (A), adopt any dollar

amount that is lower than a dollar amount specified in paragraph (3).

(c) CRITERIA FOR ASSISTANCE.—

(1) IN GENERAL.—A certified development company shall meet criteria established by the Administrator, including such an extent of participation to be required or amount of paid-in capital to be used in each instance as the Administrator determines to be reasonable.

(2) SMALL BUSINESS CONCERN FUNDS.—In the case of any project of a small business concern financed under the program, the small business concern (or its owners, stockholders, or affiliates) receiving assistance through a body authorized by this chapter shall provide—

(A) at least 15 percent of the total financed cost of the project if the small business concern has been in operation for a period of 2 years or less or if the project involves the construction of a limited-purpose or single-purpose building or other structure;

(B) at least 20 percent of the total financed cost of the project if the project involves both of the conditions described in subparagraph (A); or

(C) an amount specified by the certified development company, which shall be at least 10 percent of the total financed cost of the project, if the project involves neither of the conditions described in subparagraph (A).

(3) THIRD-PARTY FUNDS.—

(A) THIRD-PARTY SOURCES.—Third-party funds for a project of a small business concern financed under the program may be derived, in whole or in part, from—

(i) a State or local government;

(ii) a bank or other financial institution;

(iii) a foundation or other nonprofit institution; or

(iv) the small business concern (or its owners, stockholders, or affiliates).

(B) THIRD-PARTY FUNDING REQUIREMENT.—Not less than 50 percent of the total financed cost of a project described in subparagraph (A) of (B) of paragraph (2) shall come from one or more third-party sources described in clauses (i), (ii), and (iii) of subparagraph (A).

(C) SELLER FINANCING.—Financing provided by a seller of property to a small business concern for a project may be used to meet the requirements of this paragraph if the seller subordinates the interest of the seller in the property to the debenture guaranteed by the Administrator.

(4) COLLATERAL.—

(A) IN GENERAL.—The collateral provided by a small business concern—

(i) shall generally include a subordinate lien position on the property being financed under the program; and

(ii) is only one of the factors to be evaluated in the credit determination.

(B) ADDITIONAL COLLATERAL.—Additional collateral shall be required only if the Administrator determines, on a case-by-case basis, that additional security is necessary to protect the interest of the Government.

(C) APPRAISALS.—With respect to commercial real property provided by a small business concern as collateral, an appraisal of the property by a State-licensed or State-certified appraiser—

(i) shall be required by the Administrator before disbursement of the loan if the estimated value of the property is more than $250,000; and

(ii) may be required by the Administrator or the certified development company before disbursement of the loan, if—

(I) the estimated value of the property is $250,000 or less; and

(II) an appraisal is necessary for appropriate evaluation of creditworthiness.

(5) LEASING.—

(A) IN GENERAL.—In the case of a project to construct a new facility for a small business concern, up to 33 percent of the total project may be leased, if reasonable projections of growth demonstrate that the small business concern—

(i) will need additional space within 3 years after the date of completion of the facility; and

(ii) will fully utilize the additional space within 10 years after the date of completion of the facility.

(B) LIMITATION ON LEASING.—In addition to any portion of a project of a small business concern permitted to be leased under subparagraph (A), not to exceed 20 percent of the project may be leased by the small business concern to one or more other tenants if the small business occupies permanently and uses not less than a total of 60 percent of the space in the project after the execution of any leases authorized under this section.

(6) OWNERSHIP REQUIREMENTS.—

(A) OWNERSHIP BY SPOUSE UNDER COMMUNITY PROPERTY LAW.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under the program shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property law of a State for purposes of determining marital interests.

(B) OWNERSHIP BY RELATIVES.—

(i) IN GENERAL.—The Administrator shall not decline to issue a debenture guarantee for a project of a small business concern on the ground that the ownership interests of the small business concern and the ownership interests of the property to be financed with the proceeds of a loan made with the proceeds of the guaranteed debenture are not identical because one or more of the classes of relatives described in clause (ii) have an ownership interest in the small business concern or the property if the Administrator determines, on a case-by-case basis, that the ownership interest, the guarantee, and the proceeds of the loan will substantially benefit the small business concern.

(ii) CLASSES OF RELATIVES.—The classes of relatives referred to in clause (i) are father, mother, son, daughter, wife, husband, brother, or sister.

(d) DEBENTURE AMOUNT AND INTEREST.—

(1) MAXIMUM DEBENTURE AMOUNT.—The amount of a guaranteed debenture shall not exceed the aggregate amount of the loans to be made from the proceeds of the guaranteed debenture (other than any excess attributable to the administrative costs of the loans).

(2) MINIMUM INTEREST RATE.—The interest rate on a guaranteed debenture shall be not less than the rate of interest determined by the Secretary of the Treasury for purposes of section 30304(b) of this title.

(e) LOAN APPROVAL, AMOUNT, AND INTEREST RATE.—

(1) APPROVAL BY THE ADMINISTRATOR.—The Administrator shall approve each loan made with the proceeds of a guaranteed debenture.

(2) MAXIMUM LOAN AMOUNT.—

(A) PERCENTAGE OF PROJECT COST.—The amount of a loan made with the proceeds of a guaranteed debenture shall not exceed the amount that is equal to 50 percent of the cost of the project with respect to which the loan is made.

(B) DOLLAR AMOUNT.—

(i) IN GENERAL.—Except as provided in clause (ii), the amount of a loan made with the proceeds of a guaranteed debenture shall not exceed $1,500,000.

(ii) EXCEPTIONS.—

(I) PUBLIC POLICY OBJECTIVES.—The amount of a loan for a project directed toward one or more of the public policy objectives described in subsection (b)(1)(B)(iii) shall not exceed $2,000,000.

(II) SMALL MANUFACTURERS.—The amount of a loan to a small manufacturer shall not exceed $4,000,000.

(III) REDUCTION OF ENERGY CONSUMPTION.—The amount of a loan for a project that reduces the borrower's energy consumption by at least 10 percent shall not exceed $4,000,000.

(IV) GENERATION OF RENEWABLE ENERGY OR RENEWABLE FUEL.—The amount of a loan for a project that generates renewable energy or renewable fuel (such as biodiesel or ethanol production) shall not exceed $4,000,000.

(f) COMMERCIAL LOAN INTEREST RATE.—

(1) PURPOSE.—The purpose of this subsection is to facilitate the orderly and necessary flow of long-term loans from certified development companies to small business concerns.

(2) MAXIMUM INTEREST RATE.—Notwithstanding the provisions of the constitution or laws of any State limiting the rate or amount of interest that may be charged, taken, received, or reserved, the maximum legal rate of interest on any commercial loan that funds any portion of the cost of the project financed under the program that is not funded by a guaranteed debenture shall be a rate established by the Administrator under paragraph (3).

(3) ESTABLISHMENT BY THE ADMINISTRATOR.—The Administrator shall establish and publish quarterly a maximum legal interest rate for any commercial loan that funds any portion of the cost of a project financed under the program that is not funded by a guaranteed debenture.

(g) FEES AND CHARGES.—

(1) LOAN FEES.—

(A) IN GENERAL.—With respect to each loan made with the proceeds of a guaranteed debenture, the Administrator shall assess and collect a fee, which shall be payable by the borrowing small

business concern, in an amount established annually by the Administrator.

(B) AMOUNT.—

(i) IN GENERAL.—Except as provided in clause (ii), the amount of a loan fee shall not exceed the lesser of—

(I) 0.9375 percent per year of the outstanding balance of the loan; or

(II) the minimum amount necessary to reduce to zero the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing debentures under the program.

(ii) EXCEPTION.—

(I) IN GENERAL.—In the case of a loan made during the 2-year period beginning on October 1, 2002, the amount of a loan fee shall be 50 percent of the amount established under clause (i), for the life of the loan.

(II) LIMITATION.—Subclause (I) shall be effective only to the extent that funds are made available under appropriations Acts, which funds shall be used by the Administrator to offset the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) of that subclause.

(C) USE OF PROCEEDS.—The Administrator shall use the proceeds of loan fees collected to offset the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of making guarantees under the program.

(2) ADMINISTRATIVE EXPENSE CHARGES.—The Administrator may impose a charge for administrative expenses with respect to a guaranteed debenture.

(3) PARTICIPATION FEES.—

(A) IN GENERAL.—The Administrator shall collect a one-time fee in an amount equal to 50 basis points on the total participation in a project by an entity described in clause (i), (ii), or (iii) of subsection (c)(3)(A) if the participation will occupy a senior credit position to that of the certified development company.

(B) USE OF PROCEEDS.—All proceeds of the participation fee shall be used to offset the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of making guarantees under the program.

(4) CERTIFIED DEVELOPMENT COMPANY FEES.—

(A) IN GENERAL.—The Administrator shall collect annually from a certified development company a fee of 0.125 percent of the outstanding principal balance of any guaranteed debenture approved by the Administrator on or after October 1, 1996.

(B) DERIVATION.—The fee under subparagraph (A) shall be derived from the servicing fees collected by the certified development company pursuant to regulation and not from any additional fee imposed on a small business concern.

(C) USE OF PROCEEDS.—All proceeds of the certified development company fee shall be used to offset the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of making guarantees under the program.

(5) APPLICABILITY.—The fees authorized by this subsection apply to financings approved by the Administrator on or after October 1, 1996.

(h) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administrator under the program shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as defined in section 502 of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a)) to the Administrator of purchasing and guaranteeing debentures under the program.

(i) REQUIRED ACTIONS ON DEFAULT.—

(1) INITIAL ACTIONS.—Not later than the 45th day after the date on which a payment on a loan funded through a guaranteed debenture is due and not received, the Administrator shall—

(A) take all necessary steps to bring the loan current; or

(B) implement a formal written deferral agreement.

(2) PURCHASE OR ACCELERATION OF DEBENTURE.—Not later than the 65th day after the date on which a payment on a loan described in paragraph (1) is due and not received, and absent a formal written deferral agreement, the Administrator shall take all necessary steps to purchase or accelerate the guaranteed debenture.

(3) PREPAYMENT PENALTIES.—With respect to the portion of a project derived from funds described in subsection (c)(3), the Administration—

(A) shall negotiate the elimination of any prepayment penalties or late fees on a defaulted loan made before September 30, 1996;

(B) shall not pay any prepayment penalty or late fee on the default-based purchase of a loan issued after September 30, 1996; and

(C) for any project financed after September 30, 1996, shall not pay any default interest rate higher than the interest rate on the note prior to the date of default.

§ 33104. Private debenture sales

(a) IN GENERAL.—Notwithstanding any other law (including a regulation), all guaranteed debentures shall be sold to investors, publicly or by private placement.

(b) FEDERAL FINANCING BANK.—Nothing in any provision of law authorizes the Federal Financing Bank to acquire—

(1) any obligation the payment of principal or interest on which at any time has been guaranteed in whole or in part under the program that is being sold under subsection (a);

(2) any obligation that is an interest in an obligation described in paragraph (1); or

(3) any obligation that is secured by, or substantially all of the value of which is attributable to, an obligation described in paragraph (1) or (2).

§ 33105. Pooling of debentures

(a) ISSUANCE.—

(1) IN GENERAL.—The Administrator may issue trust certificates representing ownership of all or a fractional part of a guaranteed debenture.

(2) TRUST OR POOL.—A trust certificate issued under paragraph (1) shall be based on and backed by a trust or pool approved by the Administrator and composed solely of guaranteed debentures.

(b) GUARANTEE.—

(1) IN GENERAL.—The Administrator may, on such terms and conditions as the Administrator considers appropriate, guarantee the timely payment of the principal of and interest on trust certificates issued by the Administrator (or an agent of the Administrator) for purposes of this section.

(2) LIMITATION.—A guarantee shall be limited to the extent of principal and interest on the guaranteed debentures that compose the trust or pool.

(3) PREPAYMENT ON REDEMPTION.—

(A) REDUCTION OF GUARANTEE.—If a guaranteed debenture in a trust or pool is prepaid, 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 that the prepaid guaranteed debenture represents in the trust or pool.

(B) LIMITATION ON GUARANTEE OF INTEREST.—Interest on a prepaid or defaulted guaranteed debenture shall accrue and be guaranteed by the Administrator only through the date of payment on the guarantee.

(C) CALL OF TRUST CERTIFICATE.—During the term of a trust certificate, the trust certificate may be called for redemption due to prepayment or default of all guaranteed debentures constituting the trust or pool.

(c) FULL FAITH AND CREDIT OF THE UNITED STATES.—The full faith and credit of the United States is pledged to the payment of all amounts that may be required to be paid under any guarantee of a trust certificate issued by the Administrator (or an agent of the Administrator) under this section.

(d) FEES.—

(1) ADMINISTRATOR.—The Administrator shall not collect any fee for a guarantee under this section.

(2) AGENT OF THE ADMINISTRATOR.—This subsection does not preclude an agent of the Administrator from collecting a fee approved by the Administrator for performing the functions described in subsection (f)(2).

(e) SUBROGATION RIGHTS; OWNERSHIP RIGHTS IN GUARANTEED DEBENTURES.—

(1) SUBROGATION.—If the Administrator pays a claim under a guarantee issued under this section, the Administrator shall be subrogated fully to the rights satisfied by the payment.

(2) OWNERSHIP RIGHTS IN GUARANTEED DEBENTURES.—No Federal, State, or local law shall preclude or limit the exercise by the Administrator of the Administrator's ownership rights in the guaranteed debentures constituting the trust or pool against which the trust certificates are issued.

(f) CENTRAL REGISTRATION; REGULATION OF BROKERS AND DEALERS.—

(1) CENTRAL REGISTRATION.—The Administrator shall provide for a central registration of all trust certificates sold pursuant to this section.

(2) AGENT.—

(A) IN GENERAL.—The Administrator shall contract with an agent to carry out on behalf of the Administrator—

(i) the central registration functions under this section; and

(ii) the issuance of trust certificates to facilitate poolings.

(B) BOND OR INSURANCE.—The agent under subparagraph (A) shall provide a fidelity bond or insurance in such amounts as the Administrator determines to be necessary to fully protect the interests of the Government.

(3) DISCLOSURE.—The Administrator shall require a seller to disclose to a purchaser of a trust certificate issued under this section, before the sale, information on the terms, conditions, and yield of the trust certificate.

(4) REGULATION OF BROKERS AND DEALERS.—The Administrator may regulate brokers and dealers in trust certificates sold under this section.

(5) FORM OF REGISTRATION.—This subsection does not preclude the use of a book-entry or other electronic form of registration for trust certificates.

§ 33106. Prohibition of acceptance of funding with certain conditions, priorities, restrictions, or requirements

Notwithstanding any other provision of law, a certified development company shall not accept funding from any source (including a Federal agency) if the funding—

(1) includes any condition, priority, or restriction on the type of small business concern to which the certified development company may provide financial assistance under the program; or

(2) includes any condition or imposes any requirement, directly or indirectly, on any recipient of assistance under the program.

§ 33107. Accredited lenders program

(a) ESTABLISHMENT OF PROGRAM.—The Administrator may establish as part of the program an accredited development company program for qualified development companies that meet the requirements of subsection (b).

(b) REQUIREMENTS.—The Administrator may designate a qualified development company as an accredited lender if the qualified development company—

(1) has been an active participant in the program for not less than the preceding 12 months;

(2) has well-trained, qualified personnel who are knowledgeable in the Administration's lending policies and procedures for the program;

(3) has the ability to process, close, and service financing for plant and equipment under the program;

(4) has a loss rate on the qualified development company's debentures that is reasonable and acceptable to the Administrator;

(5) has a history of submitting to the Administrator complete and accurate debenture guarantee application packages; and

(6) has demonstrated the ability to serve small business credit needs for financing plant and equipment through the program.

(c) EXPEDITED PROCESSING OF LOAN APPLICATIONS.—The Administrator shall develop an expedited procedure for processing a loan application or servicing action submitted by an accredited lender.

(d) SUSPENSION OR REVOCATION OF DESIGNATION.—

(1) IN GENERAL.—The Administrator may suspend or revoke the designation of a qualified development company as an accredited lender if the Administrator determines that—

(A) the qualified development company has not continued to meet the criteria for eligibility under subsection (b); or

(B) the qualified development company has failed to adhere to the Administrator's regulations or is violating any other applicable provision of law.

(2) EFFECT.—A suspension or revocation under paragraph (1) shall not affect any outstanding debenture guarantee.

§ 33108. Premier certified lenders program

(a) ESTABLISHMENT OF PROGRAM.—The Administrator may establish as part of the program 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, a certified development company shall submit to the Administrator an application at such time, in such manner, and containing such information as the Administrator may require.

(2) DESIGNATION.—The Administrator may designate a certified development company as a premier certified lender if—

(A) the certified development company is an active certified development company in good standing;

(B) the certified development company has been an active participant in the accredited lenders program during the entire 12-month period preceding the date on which the certified development company submits an application under paragraph (1);

(C) the certified development company has a history of—

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

(ii) properly closing loans under the program and servicing its loan portfolio;

(D) the certified development company agrees to assume and to reimburse the Administrator—

(i) for 10 percent of any loss sustained by the Administrator as a result of default by the certified development company in the payment of principal or interest on a guaranteed debenture issued by the certified development company; or

(ii) for 15 percent of the loss, if the loss is attributable to a guaranteed debenture issued by the certified development company during any period for which an election is in effect under subsection (c)(8) for the certified development company; and

(E) the Administrator determines, with respect to the certified development company, that the loss reserve established under subsection (c) is sufficient for the certified development company to meet its obligations to protect the Federal Government from risk of loss.

(3) WAIVER OF REQUIREMENT.—The Administrator may waive the requirement of paragraph (2)(B) with respect to a certified development company if the certified development company is qualified to participate in the accredited lenders program.

(4) 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) to (E) of paragraph (2).

(c) LOSS RESERVE.—

(1) IN GENERAL.—A premier certified lender shall establish a loss reserve for financing approved under this section.

(2) AMOUNT.—The amount of a loss reserve under paragraph (1) shall be 10 percent of the amount of the premier certified lender's exposure, as determined under subsection (b)(2)(D).

(3) ASSETS.—A loss reserve under paragraph (1) shall be comprised of—

(A) segregated funds on deposit in one or more accounts with one or more federally insured depository institutions selected by the premier certified lender, subject to a collateral assignment in favor of, and in a format acceptable to, the Administrator;

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

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

(4) CONTRIBUTIONS.—A premier certified lender shall make contributions to a loss reserve under paragraph (1) in the following amounts and at the following intervals:

(A) 50 percent when a debenture is closed.

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

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

(5) REIMBURSEMENT OF THE ADMINISTRATOR FOR LOSS.—If a loss is sustained by the Administrator, any portion of the loss reserve, and other funds provided by the premier certified lender as necessary, may be used to reimburse the Administrator for the premier certified lender's share of the loss as provided in subsection (b)(2)(D) of this section.

(6) REPLACEMENT OF USED FUNDS.—If a premier certified lender uses funds in its loss reserve, the premier certified lender shall replace an equivalent amount of funds in the loss reserve not later than 30 days after the date of the use.

(7) WITHDRAWALS.—

(A) IN GENERAL.—The Administrator shall allow a premier certified lender to withdraw from its loss reserve amounts attributable to any debenture that is repaid.

(B) TEMPORARY REDUCTION BASED ON OUTSTANDING BALANCE.—

(i) IN GENERAL.—Notwithstanding subparagraph (A), during the 2-year period beginning on August 26, 2004, the Administrator shall allow a premier certified lender to withdraw from its loss reserve such amounts as are in excess of one percent of the aggregate outstanding balances of debentures to which the loss reserve relates.

(ii) APPLICABILITY.—Clause (i) does not apply with respect to a debenture before 100 percent of the contribution described in paragraph (4) with respect to the debenture is made.

(8) ALTERNATIVE LOSS RESERVE.—

(A) DEFINITIONS.—In this paragraph:

(i) CALENDAR QUARTER.—The term ''calendar quarter'' means—

(I) the period that begins on January 1 and ends on March 31 of a year;

(II) the period that begins on April 1 and ends on June 30 of a year;

(III) the period that begins on July 1 and ends on September 30 of a year; and

(IV) the period that begins on October 1 and ends on December 31 of a year.

(ii) ELIGIBLE CALENDAR QUARTER.—The term ''eligible calendar quarter'' means—

(I) the first calendar quarter that begins after August 26, 2004; and

(II) each of the 7 succeeding calendar quarters.

(iii) PCLP LOAN.—The term ''PCLP loan'' means a loan guaranteed under this section.

(iv) QUALIFIED HIGH LOSS RESERVE PCL.—The term ''qualified high loss reserve PCL'' means, with respect to any calendar year, a premier certified lender that the Administrator designates as a qualified high loss reserve PCL for that year under subparagraph (B).

(v) QUALIFIED INDEPENDENT AUDITOR.—The term ''qualified independent auditor'', with respect to any year, means an auditor that—

(I) is compensated by a qualified high loss reserve PCL;

(II) is independent of the qualified high loss reserve PCL; and

(III) was approved by the Administrator during the preceding year.

(vi) SPECIFIED RISK MANAGEMENT BENCHMARK.—The term ''specified risk management benchmark'' means the following rates, as determined by the Administrator:

(I) Currency rate.

(II) Delinquency rate.

(III) Default rate.

(IV) Liquidation rate.

(V) Loss rate.

(B) DESIGNATION OF QUALIFIED HIGH LOSS RESERVE PCLS.—The Administrator may designate a premier certified lender as a qualified high loss reserve PCL if the Administrator determines that—

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

(ii) the premier certified lender has established and is using 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 premier certified lender on the basis of the risk of loss associated with the loan; and

(iii)(I) the premier certified lender meets or exceeds 4 or more of the specified risk management benchmarks as of the most recent assessment by the Administrator; or

(II) the Administrator issues a waiver with respect to the requirement of subclause (I).

(C) ELECTION.—With respect to any eligible calendar quarter, a 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 that eligible calendar quarter.

(D) CONTRIBUTIONS.—

(i) ORDINARY RULES INAPPLICABLE.—Except as provided under clause (ii) and paragraph (6), a qualified high loss reserve PCL that makes the election described in subparagraph (C) with respect to an eligible calendar quarter shall not be required to make contributions to its loss reserve during that eligible calendar quarter.

(ii) CONTRIBUTION BASED ON LOSS.—A qualified high loss reserve PCL that makes the election described in subparagraph (C) with respect to an eligible calendar quarter shall, before the last day of that eligible calendar quarter, make such contributions to its loss reserve as are necessary to ensure that the amount of the loss reserve of the qualified high loss reserve PCL is—

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

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

(iii) CERTIFICATION.—Before the end of any eligible calendar quarter for which an election is in effect under subparagraph (C), the head of the qualified high loss reserve PCL shall submit to the Administrator a certification that the loss reserve of the qualified high loss reserve PCL is sufficient to meet the qualified high loss reserve PCL's obligation to protect the Federal Government from risk of loss. The certification shall be in such form and submitted in such manner

as the Administrator may require and shall be signed by the head of the qualified high loss reserve PCL and the auditor making the determination under clause (ii)(II).

(E) WITHDRAWALS.—

(i) ORDINARY RULE INAPPLICABLE.—Paragraph (7) 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 (C).

(ii) EXCESS FUNDS.—At the end of each calendar quarter for which an election is in effect under subparagraph (C), the Administrator shall allow the qualified high loss reserve PCL to withdraw from its loss reserve the excess of the amount of the loss reserve over the greater of—

(I) $100,000; or

(II) the amount that is determined under subparagraph (D)(ii)(II) to be sufficient to meet the PCL's obligation to protect the Federal Government from risk of loss.

(F) RECONTRIBUTION.—

(i) IN GENERAL.—If the requirements of this paragraph apply to a qualified high loss reserve PCL for any eligible calendar quarter and cease to apply to that qualified high loss reserve PCL for any subsequent eligible calendar quarter, the qualified high loss reserve PCL shall make a contribution to its loss reserve in such amount as the Administrator may determine, subject to clause (ii).

(ii) AMOUNT.—The amount determined under clause (i) shall not exceed the amount that would result in the total amount in the loss reserve being equal to the amount that would have been in the loss reserve had this paragraph never applied to the qualified high loss reserve PCL.

(iii) FORM.—The Administrator may require that a contribution under clause (i) be made as a single payment or as a series of payments.

(G) RISK MANAGEMENT.—

(i) IN GENERAL.—If a qualified high loss reserve PCL fails to meet the requirement of subparagraph (B)(iii) during any period for which an election is in effect under subparagraph (C) and the failure continues for 180 days—

(I) the requirements of paragraphs (2), (4), and (7) shall apply to the qualified high loss reserve PCL as of the end of that 180-day period; and

(II) the qualified high loss reserve PCL shall make the contribution to its loss reserve described in subparagraph (F).

(ii) WAIVER.—The Administrator may waive the requirements of clause (i).

(H) REGULATIONS.—

(i) IN GENERAL.—The Administrator shall prescribe regulations to carry out this paragraph.

(ii) CONTENTS.—The regulations shall include provisions relating to—

(I) the approval of auditors under subparagraph (A)(v); and

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

(d) SALE OF CERTAIN DEFAULTED LOANS.—

(1) NOTICE.—

(A) IN GENERAL.—If, on default in repayment, the Administrator acquires a loan guaranteed under this section and identifies the loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, the Administrator shall give prior notice of the inclusion of the loan in the bulk asset sale to any certified development company that has a contingent liability under this section.

(B) TIMING.—The notice shall be given to the certified development company as soon as possible after the financing is identified, but not less than 90 days before the date on which the Administrator first makes any records on the financing available for examination by prospective purchasers prior to its offering in a package of loans for bulk sale.

(2) LIMITATION.—The Administration shall not offer a loan described in paragraph (1) as part of a bulk sale unless the Administrator—

(A) provides prospective purchasers with the opportunity to examine the Administrator's records with respect to the loan; and

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

(e) LOAN APPROVAL AUTHORITY.—

(1) IN GENERAL.—Notwithstanding section 33103(e)(1) of this title, and subject to such terms and conditions as the Administrator may establish, the Administrator may—

(A) permit a premier certified lender to approve, authorize, close, service, foreclose, litigate (except that the Administrator 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 the premier certified lender; and

(B) authorize the guarantee of such a 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 Administrator under section 33103 of this title, 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 (including a regulation).

(f) REVIEW.—

(1) IN GENERAL.—After the issuance and sale of debentures under this section, the Administrator, at intervals of not greater than 12 months, shall review the financings made by each premier certified lender.

(2) MATTERS TO BE REVIEWED.—A review shall include a premier certified lender's credit decisions and general compliance with the eligibility requirements for each financing approved under the premier certified lenders program.

(3) CONSIDERATION OF FINDINGS.—The Administrator shall consider the findings of the review in carrying out subsection (g), but the review shall not affect any outstanding debenture guarantee.

(g) SUSPENSION OR REVOCATION.—

(1) IN GENERAL.—The designation of a certified development company as a premier certified lender may be suspended or revoked if the Administrator determines that the certified development company—

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

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

(C) is failing to adhere to the Administrator's regulations; or

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

(2) EFFECT OF SUSPENSION OR REVOCATION.—A suspension or revocation under this subsection shall not affect any outstanding debenture guarantee.

(h) PROGRAM GOALS.—A certified development company that is designated as a premier certified lender shall establish a goal of processing a minimum of not less than 50 percent of the loan applications that the certified development company receives for assistance under the premier certified lenders program.

§ 33109. Foreclosure and liquidation of loans

(a) DELEGATION OF AUTHORITY.—The Administrator shall delegate to a qualified development company that meets the eligibility requirements of subsection (b)(1) the authority to foreclose and liquidate, or to otherwise treat in accordance with this section, defaulted loans in its portfolio that are funded with the proceeds of guaranteed debentures.

(b) ELIGIBILITY FOR DELEGATION.—

(1) REQUIREMENTS.—A qualified development company shall be eligible for a delegation of authority under subsection (a) if—

(A) the qualified development company—

(i) participated in the loan liquidation pilot program under section 204 of the Small Business Programs Improvement Act of 1996 (15 U.S.C. 695 note; 110 Stat. 3009–736), as in effect on the day before promulgation of final regulations by the Administrator implementing this section;

(ii) is participating in the premier certified lenders program; or

(iii) during the 3 fiscal years immediately prior to seeking such a delegation, has made an average of not less than 10 loans per year that are funded with the proceeds of guaranteed debentures; and

(B) the qualified development company—

(i) has one or more employees—

(I) who have not less than 2 years of substantive decisionmaking experience in administering the liquidation and workout of problem loans secured in a manner substantially similar to loans funded with the proceeds of guaranteed debentures; and

(II) who have completed a training program on loan liquidation developed by the Administrator in conjunction with qualified development companies that meet the requirements of this paragraph; or

(ii) submits to the Administrator documentation demonstrating that the qualified development company has contracted with a qualified third party to perform any liquidation activities and secures the approval of the contract by the Administrator with respect to the qualifications of the contractor and the terms and conditions of liquidation activities.

(2) CONFIRMATION.—

(A) EXAMINATION.—On request, the Administrator shall examine the qualifications of a qualified development company described in subsection (a) to determine whether the qualified development company is eligible for the delegation of authority under subsection (a).

(B) DETERMINATION OF INELIGIBILITY.—If the Administrator determines that a qualified development company is not eligible, the Administrator shall provide the qualified development company with the reasons for ineligibility.

(c) SCOPE OF DELEGATED AUTHORITY.—

(1) IN GENERAL.—A qualified development company to which the Administrator delegates authority under subsection (a) may, with respect to any loan described in subsection (a)—

(A) perform all liquidation and foreclosure functions, including the purchase in accordance with this subsection of any other indebtedness secured by the property securing the loan, in a reasonable and sound manner according to commercially accepted practices, pursuant to a liquidation plan approved in advance by the Administrator under paragraph (2)(A);

(B) litigate any matter relating to the performance of the functions described in subparagraph (A), except that the Administrator may—

(i) defend or bring any claim if—

(I) the outcome of the litigation may adversely affect the Administrator's management of the program; or

(II) the Administrator is entitled to legal remedies not available to a qualified development company, and those remedies will benefit the Administrator or the qualified development company; or

(ii) oversee the conduct of any such litigation; and

(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and

pursuant to a workout plan approved in advance by the Administrator under paragraph (2)(C).

(2) APPROVAL BY THE ADMINISTRATOR.—

(A) LIQUIDATION PLAN.—

(i) SUBMISSION.—Before carrying out functions described in paragraph (1)(A), a qualified development company shall submit to the Administrator a proposed liquidation plan.

(ii) ACTION BY THE ADMINISTRATOR ON PROPOSED LIQUIDATION PLAN.—

(I) TIMING.—Not later than 15 business days after a liquidation plan is received by the Administrator under clause (i), the Administrator shall approve or reject the liquidation plan.

(II) NOTICE OF NO DECISION.—With respect to any liquidation plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administrator shall within that period provide in accordance with subparagraph (E) notice to the qualified development company that submitted the liquidation plan.

(iii) ROUTINE ACTIONS.—In carrying out functions described in paragraph (1)(A), a qualified development company may undertake routine actions not addressed in a liquidation plan without obtaining additional approval from the Administrator.

(B) PURCHASE OF INDEBTEDNESS.—

(i) IN GENERAL.—In carrying out functions described in paragraph (1)(A), a qualified development company shall submit to the Administrator a request for written approval before committing the Administrator to the purchase of any other indebtedness secured by the property securing a defaulted loan.

(ii) ACTION BY THE ADMINISTRATOR ON REQUEST.—

(I) TIMING.—Not later than 15 business days after receiving a request under clause (i), the Administrator shall approve or deny the request.

(II) NOTICE OF NO DECISION.—With respect to any request that cannot be approved or denied within the 15-day period required by subclause (I), the Administrator shall within that period provide in accordance with subparagraph (E) notice to the qualified development company that submitted the request.

(C) WORKOUT PLAN.—

(i) IN GENERAL.—In carrying out functions described in paragraph (1)(C), a qualified development company shall submit to the Administrator a proposed workout plan.

(ii) ACTION BY THE ADMINISTRATOR ON PROPOSED WORKOUT PLAN.—

(I) TIMING.—Not later than 15 business days after a workout plan is received by the Administrator under clause (i), the Administrator shall approve or reject the workout plan.

(II) NOTICE OF NO DECISION.—With respect to any workout plan that cannot be approved or denied within the 15-day period required by subclause (I), the Administrator shall, within that period, provide in accordance with subparagraph (E) notice to the qualified development company that submitted the workout plan.

(D) COMPROMISE OF INDEBTEDNESS.—In carrying out functions described in paragraph (1)(A), a qualified development company may—

(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the qualified development company secures the written approval of the Administrator.

(E) CONTENTS OF NOTICE OF NO DECISION.—A notice provided by the Administrator under subparagraph (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

(i) shall be in writing;

(ii) shall state the specific reason for the Administrator's inability to act on a liquidation plan, request, or workout plan;

(iii) shall include an estimate of the additional time required by the Administrator to act on the liquidation plan, request, or workout plan; and

(iv) if the Administrator cannot act because insufficient information or documentation was provided by the qualified development company that submitted the liquidation plan, request, or workout plan, shall specify the nature of such additional information or documentation.

(3) CONFLICT OF INTEREST.—In carrying out functions described in paragraph (1), a qualified development company shall take no action

that would result in an actual or apparent conflict of interest between the qualified development company (or any employee of the qualified development company) and any third party lender, associate of a third party lender, or any other person participating in a liquidation, foreclosure, or loss mitigation action.

(d) SUSPENSION OR REVOCATION OF AUTHORITY.—The Administrator may revoke or suspend a delegation of authority under this section to a qualified development company if the Administration determines that the qualified development company—

(1) does not meet the requirements of subsection (b)(1);

(2) has violated any applicable regulation of the Administrator or any other applicable law; or

(3) fails to comply with any reporting requirement that may be established by the Administrator relating to the carrying out of functions described in this section.

Subtitle IV—Miscellaneous

CHAPTER 401—PRIME PROGRAM

Sec.
40101. Definitions.
40102. Establishment of program.
40103. Uses of assistance.
40104. Allocation of assistance; subgrants.
40105. Matching requirement.
40106. Applications for assistance.
40107. Recordkeeping.
40108. Implementation.
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§ 40101. Definitions

In this chapter:

(1) CAPACITY BUILDING SERVICE.—The term ''capacity building service'' means a service provided to an organization that is, or that is in the process of becoming, a microenterprise development organization or program, for the purpose of enhancing its ability to provide training and services to disadvantaged entrepreneurs.

(2) COLLABORATIVE.—The term ''collaborative'' means 2 or more nonprofit entities that agree to act jointly as a qualified organization under the program.

(3) DISADVANTAGED ENTREPRENEUR.—The term ''disadvantaged entrepreneur'' means a microentrepreneur that is—

(A) a low-income person;

(B) a very low-income person; or

(C) an entrepreneur that lacks adequate access to capital or other resources essential for business success, or is economically disadvantaged, as determined by the Administrator.

(4) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702).

(5) INTERMEDIARY.—The term ''intermediary'' means a private, nonprofit entity that seeks to serve qualified organizations.

(6) LOW-INCOME PERSON.—The term ''low-income person'' has the meaning given the term in section 103 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702).

(7) MICROENTERPRISE.—The term ''microenterprise'' means a sole proprietorship, partnership, or corporation that—

(A) has fewer than 5 employees; and

(B) generally lacks access to conventional loans, equity, or other banking services.

(8) MICROENTERPRISE DEVELOPMENT ORGANIZATION OR PROGRAM.—The term ''microenterprise development organization or program'' means a nonprofit entity (including a community development corporation or other nonprofit development organization or a social service organization), or a program administered by such an entity, that provides services to disadvantaged entrepreneurs.

(9) MICROENTREPRENEUR.—The term ''microentrepreneur'' means the owner or developer of a microenterprise.

(10) PROGRAM.—The term ''program'' means the PRIME program.

(11) QUALIFIED ORGANIZATION.—The term ''qualified organization'' means—

(A) a nonprofit microenterprise development organization or program (or a group or collaborative thereof) that has a demonstrated record of delivering microenterprise services to disadvantaged entrepreneurs;

(B) an intermediary;

(C) a microenterprise development organization or program that is accountable to a local community, working in conjunction with a State or local government or Indian tribe; or

(D) an Indian tribe acting on its own, if the Indian tribe certifies that no private organization or program referred to in this paragraph exists within its jurisdiction.

(12) TRAINING AND TECHNICAL ASSISTANCE.—The term ''training and technical assistance'' means service and support provided to a disadvantaged entrepreneur, such as assistance for the purpose of enhancing business planning, marketing, management, financial management skills, and assistance for the purpose of accessing financial services.

(13) VERY LOW-INCOME PERSON.—The term ''very low-income person'' means a person having an income, adjusted for family size, of not more than 150 percent of the poverty line (as defined in section 673 of the Community Services Block Grant Act (42 U.S.C. 9902), including any revision required by that section).

§ 40102. Establishment of program

The Administrator shall establish a microenterprise technical assistance and capacity building grant program, to be known as the program for investment in microenterprise or the PRIME program, to provide assistance in the form of grants to qualified organizations in accordance with this chapter.

§ 40103. Uses of assistance

A qualified organization shall use a grant made under the program—

(1) to provide training and technical assistance to disadvantaged entrepreneurs;

(2) to provide training and capacity building services to microenterprise development organizations and programs and groups of such organizations to assist the organizations and programs in developing microenterprise training and services;

(3) to aid in researching and developing the best practices in the field of microenterprise and technical assistance programs for disadvantaged entrepreneurs; and

(4) for such other activities as the Administrator determines are consistent with the purposes of the program.

§ 40104. Allocation of assistance; subgrants

(a) ALLOCATION OF ASSISTANCE.—

(1) IN GENERAL.—The Administrator shall allocate assistance under the program to ensure that—

(A) activities described in section 40103(1) of this title are funded using not less than 75 percent of amounts made available for such assistance; and

(B) activities described in section 40103(2) of this title are funded using not less than 15 percent of amounts made available for such assistance.

(2) LIMIT ON INDIVIDUAL ASSISTANCE.—No single person may receive more than 10 percent of the total funds appropriated for the program in a single fiscal year.

(b) TARGETED ASSISTANCE.—The Administrator shall ensure that not less than 50 percent of the grants made under the program are used to benefit very low-income persons, including those residing on Indian reservations.

(c) SUBGRANTS.—

(1) IN GENERAL.—A qualified organization receiving assistance under the program may provide grants using that assistance to qualified small and emerging microenterprise organizations and programs, subject to such regulations as the Administrator determines to be appropriate.

(2) LIMIT ON ADMINISTRATIVE EXPENSES.—Not more than 7.5 percent of the amount of assistance received by a qualified organization under the program may be used for administrative expenses in connection with the making of subgrants under paragraph (1).

(d) DIVERSITY.—In making grants under the program, the Administrator shall ensure that grant recipients include both large and small microenterprise organizations, serving urban, rural, and Indian tribal communities with diverse populations.

(e) PROHIBITION OF PREFERENTIAL CONSIDERATION OF CERTAIN SBA PROGRAM PARTICIPANTS.—In making grants under the program, the Administrator shall ensure that any application made by a qualified organization that is a participant in the microloan program does not receive preferential consideration over applications from other qualified organizations that are not participants in the microloan program.

§ 40105. Matching requirement

(a) IN GENERAL.—Financial assistance under the program shall be matched with funds from sources other than the Federal Government in the amount of not less than 50 cents for each dollar provided by the Administration.

(b) SOURCES OF MATCHING FUNDS.—Fees, grants, gifts, funds from loan sources, and in-kind resources of a grant recipient from public or private sources may be used to comply with the matching requirement under subsection (a).

(c) EXCEPTION.—

(1) IN GENERAL.—In the case of an applicant for assistance under the program with severe constraints on available sources of matching funds, the Administrator may reduce or eliminate the matching requirement under subsection (a).

(2) LIMITATION.—Not more than 10 percent of the total funds made available to carry out the program for any fiscal year may be excepted under paragraph (1) from the matching requirement under subsection (a).

§ 40106. Applications for assistance

An application for assistance under the program shall be submitted in such form and in accordance with such procedures as the Administrator shall establish.

§ 40107. Recordkeeping

The requirements of section 115 of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4714) shall apply to a qualified organization receiving assistance from the Administrator under the program as if the qualified organization were a community development financial institution receiving assistance from the Fund under subtitle A of that Act (12 U.S.C. 4701 et seq.).

§ 40108. Implementation

The Administrator shall by regulation establish such requirements as are necessary to carry out this chapter.

§ 40109. Authorization of appropriations

There are authorized to be appropriated to the Administrator to carry out this chapter—

(1) $15,000,000 for fiscal year 2000;

(2) $15,000,000 for fiscal year 2001;

(3) $15,000,000 for fiscal year 2002; and

(4) $15,000,000 for fiscal year 2003.

CHAPTER 403—WOMEN'S BUSINESS ENTERPRISE DEVELOPMENT

Sec.
40301. Definitions.
40302. Establishment of the Interagency Committee.
40303. Duties of the Interagency Committee.
40304. Membership of the Interagency Committee.
40305. Reports from the Interagency Committee.
40306. Establishment of the National Women's Business Council.
40307. Duties of the Council.
40308. Membership and staff of the Council.
40309. Studies and other research.
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§ 40301. Definitions

In this chapter:

(1) CONTROL.—The term ''control'' means to exercise the power to make policy decisions concerning a business.

(2) COUNCIL.—The term ''Council'' means the National Women's Business Council established under section 40306 of this title.

(3) INTERAGENCY COMMITTEE.—The term ''Interagency Committee'' means the Interagency Committee on Women's Business Enterprise established under section 40302 of this title.

(4) OPERATE.—The term ''operate'' means to be actively involved in the day-to-day management of a business.

(5) WOMEN'S BUSINESS ENTERPRISE.—The term ''women's business enterprise'' means—

(A) a business or businesses owned by a woman or a group of women; or

(B) the establishment, maintenance, or development of a business or businesses by a woman or a group of women.

(6) WOMEN-OWNED BUSINESS.—The term ''women-owned business'' means a small business—

(A) that a woman or a group of women controls and operates; and

(B) of which not less than 51 percent is owned by a woman or a group of women.

§ 40302. Establishment of the Interagency Committee

There is established an interagency committee to be known as the Interagency Committee on Women's Business Enterprise.

§ 40303. Duties of the Interagency Committee

(a) IN GENERAL.—The Interagency Committee shall—

(1) monitor, coordinate, and promote the plans, programs, and operations of the Federal agencies that may contribute to the establishment and growth of women's business enterprises;

(2) develop and promote new public sector initiatives, policies, programs, and plans designed to foster women's business enterprises;

(3) review, monitor, and coordinate plans and programs, developed in the public sector, that affect the ability of women-owned businesses to obtain capital and credit; and

(4) promote and assist, as appropriate, in the development of surveys of women-owned businesses.

(b) MEETINGS.—

(1) IN GENERAL.—The Interagency Committee shall meet not less than biannually at such times as the Interagency Committee determines to be necessary to perform the duties under subsection (a).

(2) QUORUM.—A majority of the members of the Interagency Committee shall constitute a quorum for the approval of recommendations or reports issued under this section.

(c) INTERACTION WITH COUNCIL.—

(1) CONSULTATION.—In performing its duties under subsection (a), the Interagency Committee shall consult with the Council.

(2) JOINT MEETINGS.—The Interagency Committee—

(A) shall meet jointly with the Council not less frequently than biannually; and

(B) may meet jointly with the Council more frequently at the discretion of the chairperson of the Interagency Committee and the chairperson of the Council.

(3) CHAIRPERSON.—The chairperson of the Interagency Committee shall serve as chairperson of any joint meeting of the Interagency Committee and the Council.

§ 40304. Membership of the Interagency Committee

(a) IN GENERAL.—

(1) PARTICIPANTS.—The Interagency Committee shall be composed of one representative from each of the following:

(A) The Department of Commerce.

(B) The Department of Defense.

(C) The Department of Health and Human Services.

(D) The Department of Labor.

(E) The Administration.

(F) The Department of Transportation.

(G) The Department of the Treasury.

(H) The General Services Administration.

(I) The Board of Governors of the Federal Reserve.

(J) The Executive staff of the President engaged in policymaking activities.

(2) APPOINTMENTS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the head of each entity listed in paragraph (1) shall designate a representative who—

(i) shall be a policymaking official within the entity; and

(ii) shall report directly to the head of the entity on the status of the activities of the Interagency Committee.

(B) SMALL BUSINESS ADMINISTRATION.—With respect to the Administration, the representative shall be the Assistant Administrator of the Office of Women's Business Ownership, who shall—

(i) serve as the vice chairperson of the Interagency Committee;

(ii) report directly to the Administrator on the status of the activities on the Interagency Committee; and

(iii) serve as the Interagency Committee Liaison to the Council.

(3) OTHER PARTICIPATION.—Representatives of the Federal Government not listed in paragraph (1) may participate in the meetings and

functions of the Interagency Committee on a temporary basis as needed to carry out specific Interagency Committee goals.

(b) APPOINTMENT OF CHAIRPERSON.—The President, in consultation with the Administrator, shall appoint one of the members of the Interagency Committee to serve as chairperson.

(c) NONCOMPENSATION.—A member of the Interagency Committee shall serve without additional pay for such membership.

(d) DETAIL OF FEDERAL EMPLOYEES.—On request by the chairperson of the Interagency Committee, the head of any Federal agency may detail any of the personnel of the Federal agency to assist the Interagency Committee in carrying out its duties under this chapter without regard to section 3341 of title 5.

§ 40305. Reports from the Interagency Committee

The Interagency Committee, through the Administrator, shall annually submit to the President, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives a report that contains—

(1) a detailed description of the activities of the Interagency Committee, including a verbatim report on the status of progress of the Interagency Committee in meeting its responsibilities and duties under section 40303(a) of this title;

(2) the findings and conclusions of the Interagency Committee; and

(3) the Interagency Committee's recommendations for such legislation and administrative actions as the Interagency Committee considers appropriate to promote the development of small business concerns owned and controlled by women.

§ 40306. Establishment of the National Women's Business Council

There is established a council to be known as the National Women's Business Council, which shall serve as an independent source of advice and policy recommendations to—

(1) the Interagency Committee;

(2) the Administrator (through the Assistant Administrator of the Office of Women's Business Ownership);

(3) Congress; and

(4) the President.

§ 40307. Duties of the Council

(a) IN GENERAL.—The Council shall advise and consult with the Interagency Committee on matters relating to the activities, functions, and policies of the Interagency Committee, as provided in this chapter.

(b) MEETINGS.—

(1) IN GENERAL.—The Council—

(A) shall meet jointly with the Interagency Committee as provided in section 40303(c) of this title; and

(B) shall meet separately at such times as the Council considers necessary.

(2) QUORUM.—A majority of the members of the Council shall constitute a quorum for the approval of recommendations or reports issued under this section.

(c) RECOMMENDATIONS AND REPORTS.—The Council shall—

(1) make annual recommendations for consideration by the Interagency Committee; and

(2) provide reports and make such other recommendations as the Council considers appropriate to—

(A) the Interagency Committee;

(B) the President;

(C) the Administrator (through the Assistant Administrator of the Office of Women's Business Ownership); and

(D) the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives.

(d) OTHER DUTIES.—The Council shall—

(1) review, coordinate, and monitor plans and programs developed in the public and private sectors that affect the ability of women-owned business enterprises to obtain capital and credit;

(2) promote and assist in the development of a women's business census and other surveys of women-owned businesses;

(3) monitor and promote the plans, programs, and operations of Federal agencies that may contribute to the establishment and growth of women's business enterprise;

(4) develop and promote new initiatives, policies, programs, and plans designed to foster women's business enterprises;

(5) advise and consult with the Interagency Committee in the design of a comprehensive plan for a joint public-private sector effort to facilitate growth and development of women's business enterprises; and

(6) not later than 90 days after the last day of each fiscal year, submit to the President, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives, a report that contains—

(A) a detailed description of the activities of the Council, including a status report on the Council's progress toward meeting its duties under this subsection and subsection (a);

(B) the findings, conclusions, and recommendations of the Council; and

(C) the Council's recommendations for such legislation and administrative actions as the Council considers appropriate to promote the development of small business concerns owned and controlled by women.

(e) FORM OF INFORMATION.—The information described in subparagraphs (A) to (C) of subsection (d)(6) shall be reported in a report under subsection (d) verbatim, with any separate additional, concurring, or dissenting views of the Administrator.

§ 40308. Membership and staff of the Council

(a) CHAIRPERSON.—

(1) IN GENERAL.—The President shall appoint an individual to serve as chairperson of the Council, in consultation with the Administrator.

(2) QUALIFICATIONS.—The chairperson of the Council shall be a prominent business woman who is qualified to head the Council by virtue of her education, training, and experience.

(b) OTHER MEMBERS.—The Administrator shall, after receiving the recommendations of the Chairman and the Ranking Member of the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives, appoint, in consultation with the chairperson of the Council, 14 members of the Council, of whom—

(1) 4 shall be—

(A) owners of small business concerns; and

(B) members of the same political party as the President;

(2) 4 shall—

(A) be owners of small business concerns; and

(B) not be members of the same political party as the President; and

(3) 6 shall be representatives of women's business organizations, including representatives of women's business center sites.

(c) DIVERSITY.—In appointing members of the Council, the Administrator shall, to the extent possible, ensure that the members appointed reflect geographic (including both urban and rural areas), racial, economic, and public-private sectoral diversity.

(d) TERMS.—A member of the Council shall be appointed for a term of 3 years.

(e) OTHER FEDERAL SERVICE.—If, after appointment to the Council, a member of the Council becomes an officer or employee of the Federal Government, the member may continue as a member of the Council for not

longer than the 30-day period beginning on the date on which the member becomes such an officer or employee.

(f) VACANCIES.—

(1) IN GENERAL.—A vacancy on the Council shall be filled not later than 30 days after the date on which the vacancy occurs, in the manner in which the original appointment was made, and shall be subject to any conditions that applied to the original appointment.

(2) UNEXPIRED TERM.—An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(g) REIMBURSEMENTS.—A member of the Council shall serve without pay for such membership, except that a member shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by the member in carrying out the functions of the Council, in the same manner as a person serving on an advisory committee under section 10315 of this title.

(h) EXECUTIVE DIRECTOR AND ADDITIONAL EMPLOYEES.—

(1) EXECUTIVE DIRECTOR.—The Administrator, in consultation with the chairperson of the Council, shall appoint an executive director of the Council.

(2) ADDITIONAL EMPLOYEES.—On recommendation by the executive director, the chairperson of the Council may appoint and fix the pay of 4 additional employees of the Council, at a rate of pay not to exceed the maximum rate of pay payable for a position at GS–15 of the General Schedule.

(3) APPROPRIATIONS.—An appointment under paragraph (1) or (2) shall be subject to the appropriation of funds.

(i) RATES OF PAY.—The executive director and staff of the Council may be appointed without regard to the provisions of title 5 governing appointments in the competitive service, and except as provided in subsection (e), may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, except that the executive director may not receive pay in excess of the annual rate of basic pay payable for a position at ES–3 of the Senior Executive Pay Schedule under section 5382 of title 5.

§ 40309. Studies and other research

(a) IN GENERAL.—The Council may conduct such studies and other research relating to the award of Federal prime contracts and subcontracts to women-owned businesses, to access to credit and investment capital by women entrepreneurs, or to other issues relating to women-owned businesses, as the Council determines to be appropriate.

(b) CONTRACT AUTHORITY.—In conducting any study or other research under this section, the Council may contract with one or more public or private entities.

§ 40310. Authorization of appropriations

(a) IN GENERAL.—There is authorized to be appropriated to carry out this chapter $1,000,000 for each of fiscal years 2001 through 2003, of which $550,000 shall be available in each such fiscal year to carry out section 40309 of this title.

(b) BUDGET REVIEW.—No amount made available under this section for any fiscal year may be obligated or expended by the Council before the date on which the Council reviews and approves the operating budget of the Council to carry out the responsibilities of the Council for that fiscal year.

CHAPTER 451—MISCELLANEOUS

Sec.
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§ 45101. Small business economic policy

(a) DECLARATION OF SMALL BUSINESS POLICY.—

(1) PRESERVATION AND PROMOTION OF COMPETITIVE FREE ENTERPRISE SYSTEM.—For the purpose of preserving and promoting a competitive free enterprise economic system, Congress declares that it is the continuing policy and responsibility of the Federal Government to use all practical means and to take such actions as are necessary, consistent with its needs and obligations and other essential considerations of national policy, to implement and coordinate all Federal agency policies, programs, and activities to—

(A) foster the economic interests of small businesses;

(B) ensure the existence of a competitive economic climate conducive to the development, growth, and expansion of small businesses;

(C) establish incentives to ensure that adequate capital and other resources at competitive prices are available to small businesses;

(D) reduce the concentration of economic resources and expand competition; and

(E) provide an opportunity for entrepreneurship, inventiveness, and the creation and growth of small businesses.

(2) AVAILABILITY OF ADEQUATE CAPITAL TO SMALL BUSINESSES.—Congress declares that the Federal Government is committed to a policy of utilizing all reasonable means, consistent with the overall economic policy goals of the Nation and the preservation of the competitive free enterprise system of the Nation, to establish private sector incentives that will help ensure that adequate capital at competitive prices is available to small businesses.

(b) PROMOTION OF INVESTMENT.—To fulfill the policy stated in subsection (a), each Federal agency shall use all reasonable means to coordinate, create, and sustain policies and programs that promote investment in small businesses, including the investments that expand employment opportunities and foster the effective and efficient use of human and natural resources in the national economy.

(c) REPORT ON SMALL BUSINESS AND COMPETITION.—

(1) IN GENERAL.—Not later than January 20 of each year, the President shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on small business and competition.

(2) CONTENTS.—A report under paragraph (1) shall—

(A) examine the current role of small business in the economy on an industry-by-industry basis;

(B) present current and historical data on production, employment, investment, population, job creation and retention, annual business failures, annual business startups, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy, with, to the extent practicable, specific statistics divided as to urban, suburban, and rural areas;

(C) identify economic trends that may affect the small business sector and the state of competition;

(D)(i) examine the effects on small business and competition of policies, programs, and activities, including—

(I) the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.);

(II) the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.);

(III) the Securities Act of 1933 (15 U.S.C. 77a et seq.); and

(IV) the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

(ii) identify problems generated by such policies, programs, and activities; and

(iii) recommend legislative and administrative solutions to such problems;

(E) recommend a program for carrying out the policy declared in subsection (a), including such recommendations for legislation as the President considers necessary or desirable; and

(F) include an appendix that discloses, for each Federal agency—

(i) the total dollar value of all Federal contracts (including subcontracts) exceeding $10,000 in amount; and

(ii) the dollar amount of those contracts awarded to—

(I) small businesses;

(II) minority-owned businesses;

(III) female-owned businesses; and

(IV) veteran-owned businesses.

(3) DETAILING OF INFORMATION.—The information required to be contained in the report under paragraph (1) shall separately detail the portions of the information that are relevant to—

(A) small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender;

(B) small business concerns owned and controlled by women;

(C) qualified HUBZone small business concerns; and

(D) small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans.

(4) SUPPLEMENTARY REPORTS.—The President may from time to time submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives reports supplementary to a report under paragraph (1) that includes such supplementary or revised recommendations as the President considers necessary or desirable to achieve the policy declared in subsection (a).

§ 45102. Small Business Manufacturing Task Force

(a) ESTABLISHMENT.—The Administrator shall establish a Small Business Manufacturing Task Force (referred to in this section as the ''Task Force'') to address the concerns of small manufacturers.

(b) CHAIR.—The Administrator shall assign a member of the Task Force to serve as chair of the Task Force.

(c) DUTIES.—The Task Force shall—

(1) evaluate and identify whether programs and services are sufficient to serve the needs of small manufacturers;

(2) actively promote the programs and services of the Administration that serve small manufacturers; and

(3) identify and study the unique conditions facing small manufacturers and develop and propose policy initiatives to support and assist small manufacturers.

(d) MEETINGS.—

(1) FREQUENCY.—The Task Force shall meet not less than 4 times a year, and more frequently if necessary to perform its duties.

(2) QUORUM.—A majority of the members of the Task Force shall constitute a quorum to approve recommendations or reports.

(e) PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS.—A member of the Task Force shall serve without compensation in addition to that received for services rendered as an officer or employee of the United States.

(2) DETAIL OF SBA EMPLOYEES.—Any employee of the Administration may be detailed to the Task Force without reimbursement and without interruption or loss of civil service status or privilege.

(f) REPORT.—The Task Force shall annually submit a report containing the findings and recommendations of the Task Force to—

(1) the President;

(2) the Committee on Small Business and Entrepreneurship of the Senate; and

(3) the Committee on Small Business of the House of Representatives.

§ 45103. Test program for negotiation of comprehensive small business subcontracting plans

(a) TEST PROGRAM.—

(1) IN GENERAL.—The Secretary of Defense shall establish a test program under which contracting activities in the military departments and the defense agencies are authorized to undertake one or more demonstration projects to determine whether the negotiation and administration of comprehensive subcontracting plans will reduce administrative burdens on contractors while enhancing opportunities provided under Department of Defense contracts for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals.

(2) BROAD RANGE OF SUPPLIES AND SERVICES.—In selecting the contracting activities to undertake demonstration projects, the Sec-

retary of Defense shall take such action as is necessary to ensure that a broad range of the supplies and services acquired by the Department of Defense are included in the test program.

(3) CONSULTATION; PUBLIC COMMENT.—In developing the test program, the Secretary of Defense shall—

(A) consult with the Administrator; and

(B) provide an opportunity for public comment on the test program.

(b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—

(1) IN GENERAL.—In a demonstration project under the test program, the Secretary of a military department or head of a defense agency shall negotiate, monitor, and enforce compliance with a comprehensive subcontracting plan with a Department of Defense contractor described in paragraph (3).

(2) SCOPE.—The comprehensive subcontracting plan of a contractor—

(A) shall apply to the entire business organization of the contractor or to one or more of the contractor's divisions or operating elements, as specified in the subcontracting plan; and

(B) shall cover each Department of Defense contract that is entered into by the contractor and each subcontract that is entered into by the contractor as the subcontractor under a Department of Defense contract.

(3) DEPARTMENT OF DEFENSE CONTRACTOR.—A Department of Defense contractor referred to in paragraph (1) is, with respect to a comprehensive subcontracting plan negotiated in any fiscal year, a business concern that, during the immediately preceding fiscal year, furnished the Department of Defense with goods or services (including professional services, research and development services, and construction services) under at least 3 Department of Defense contracts having an aggregate value of at least $5,000,000.

(c) WAIVER OF CERTAIN SUBCONTRACTING PLAN REQUIREMENTS.—A Department of Defense contractor is not required to negotiate or submit a subcontracting plan under section 24302(a) or 24303(c) of this title with respect to a Department of Defense contract if—

(1) the contractor has negotiated a comprehensive subcontracting plan under the test program that includes the matters specified in section 24303(d) of this title;

(2) such matters have been determined to be acceptable by the Secretary of the military department or head of a Defense Agency negotiating the comprehensive subcontracting plan; and

(3) the comprehensive subcontracting plan applies to the contract.

(d) FAILURE TO MAKE A GOOD FAITH EFFORT TO COMPLY WITH A COMPANY-WIDE SUBCONTRACTING PLAN.—A contractor that has negotiated a comprehensive subcontracting plan under the test program shall be subject to section 24305 of this title regarding the assessment of liquidated damages for failure to make a good faith effort to comply with its company-wide plan and the goals specified in the plan.

(e) TERMINATION.—The test program shall terminate on September 30, 2010.

§ 45104. Coordination of Federal assistance for small business concerns adversely affected by NAFTA

The Administrator shall coordinate Federal assistance to provide counseling to small business concerns adversely affected by the North American Free Trade Agreement.

§ 45105. Disaster aid to major sources of employment

(a) IN GENERAL.—The Administrator may provide any nonagricultural enterprise that has constituted a major source of employment in an area suffering a major disaster and that is no longer in substantial operation as a result of the disaster a loan in such amount as is necessary to enable the enterprise to resume operations in order to assist in restoring the economic viability of the disaster area.

(b) LOAN AMOUNT.—A loan under this section shall be made without regard to any limitation on the amount of a loan that may otherwise be imposed by any other provision of law (including a regulation).

(c) ADDITIONAL ASSISTANCE.—Assistance under this section shall be in addition to any other Federal disaster assistance, except that such other assistance may be adjusted or modified to the extent that the Under Secretary of Emergency Preparedness and Response considers appropriate.

(d) INTEREST.—A loan made under this section shall bear interest at a 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 of 10 to 12 years, reduced by not to exceed 2 percent per year. In no event shall a loan made under this section bear interest at a rate in excess of 6 percent per year.

(e) DEFERRAL OF PAYMENT OF PRINCIPAL AND INTEREST.—The President, if the President considers it necessary, may defer payments of principal and interest on a loan under this section for a period not to exceed 3 years after the date of the loan. Any such deferred payments shall bear interest at the rate determined under subsection (d).

§ 45106. Background check policy; fingerprinting

The Administrator shall not require fingerprints to be obtained for background check purposes from any participant in any Administration program who is serving on a voluntary basis and without compensation unless the Administrator has reasonable grounds to believe that the participant's record or background is such as to make the participant ineligible to participate in the program.

§ 45107. Expedited resolution of contract dispute matters

(a) REQUIRED FAR PROVISION.—The Federal Acquisition Regulation shall include provisions that require a contracting officer—

(1) to make every reasonable effort to respond in writing within 30 days to any written request made to a contracting officer with respect to a matter relating to the administration of a contract that is received from a small business concern; and

(2) if the contracting officer is unable to reply within the 30-day period, to transmit to the contractor within that period a written notification of a specific date by which the contracting officer expects to respond.

(b) APPLICABILITY.—The provision required under subsection (a) shall not apply to a request for a contracting officer's decision under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

(c) EFFECT OF SECTION.—This section does not create any right under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

§ 45108. Small Business Procurement Advisory Council

(a) ESTABLISHMENT.—There is established an interagency council to be known as the Small Business Procurement Advisory Council (referred to in this section as the ''Council'').

(b) DUTIES.—The duties of the Council are—

(1) to develop positions on proposed procurement regulations affecting the small business community; and

(2) to submit comments reflecting such positions to appropriate regulatory authorities.

(c) MEMBERSHIP.—The Council shall be composed of the following members:

(1) The Administrator (or the designee of the Administrator).

(2) The Director of the Minority Business Development Agency.

(3) The head of each office of small and disadvantaged business utilization established under section 25109 of this title for each procuring agency.

(d) CHAIRMAN.—The Council shall be chaired by the Administrator.

(e) MEETINGS.—The Council shall meet at the call of the chairman as necessary to consider proposed procurement regulations affecting the small business community.

(f) CONSIDERATION OF COUNCIL COMMENTS.—The Federal Acquisition Regulatory Council and other appropriate regulatory authorities shall consider comments submitted in a timely manner under subsection (b)(2).

§ 45109. Small business energy efficiency

(a) DEFINITIONS.—In this section:

(1) DISABILITY.—The term ''disability'' has the meaning given the term in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

(2) EFFICIENCY PROGRAM.—the term ''efficiency program'' means the small business energy efficiency program established under subsection (c).

(3) ELECTRIC UTILITY.—The term ''electric utility'' has the meaning given the term in section 3 of the Public Utility Regulatory Policies Act of 1978 (16 U.S.C. 2602).

(4) GOVERNMENTWIDE PROGRAM.—The term ''Governmentwide program'' means the program established under subsection (b).

(5) HIGH-PERFORMANCE GREEN BUILDING.—The term ''high-performance green building'' has the meaning given the term in section 401 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061).

(6) ON-BILL FINANCING.—The term ''on-bill financing'' means a low interest or no interest financing agreement between a small business concern and an electric utility for the purchase or installation of equipment under which—

(A) the regularly scheduled payment of the small business concern to the electric utility is not reduced by the amount of the reduction in cost attributable to the new equipment; and

(B) that amount is credited to the electric utility until the cost of the purchase or installation is repaid.

(7) TELECOMMUTING.—The term ''telecommuting'' means the use of telecommunications to perform work functions under circumstances that reduce or eliminate the need to commute.

(8) TELECOMMUTING PILOT PROGRAM.—The term ''telecommuting pilot program'' means the pilot program established under subsection (d).

(b) GOVERNMENTWIDE PROGRAM.—

(1) IN GENERAL.—The Administrator shall promulgate final rules establishing the Governmentwide program authorized under subsection

(d) of section 337 of the Energy Policy and Conservation Act (42 U.S.C. 6307) that ensure compliance with that subsection.

(2) ASSISTANCE.—The Administrator shall develop and coordinate a Governmentwide program, building on the Energy Star for Small Business program, to assist small business concerns in—

(A) becoming more energy efficient;

(B) understanding the cost savings from improved energy efficiency; and

(C) identifying financing options for energy efficiency upgrades.

(3) CONSULTATION AND COOPERATION.—The Governmentwide program shall be developed and coordinated—

(A) in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency; and

(B) in cooperation with any entities that the Administrator considers appropriate, such as industry trade associations, industry members, and energy efficiency organizations.

(4) AVAILABILITY OF INFORMATION.—The Administrator shall make available the information and materials developed under the Governmentwide program to—

(A) small business concerns, including smaller design, engineering, and construction firms; and

(B) other Federal programs for energy efficiency, such as the Energy Star for Small Business program.

(5) STRATEGY AND REPORT.—

(A) STRATEGY REQUIRED.—The Administrator shall develop a strategy to educate, encourage, and assist small business concerns in adopting energy efficient building fixtures and equipment.

(B) REPORT.—Not later than December 31, 2008, the Administrator shall submit to Congress a report containing a plan to implement the strategy developed under subparagraph (A).

(c) EFFICIENCY PROGRAM.—

(1) AUTHORITY.—The Administrator shall establish a small business energy efficiency program to provide energy efficiency assistance to small business concerns through small business development centers.

(2) SMALL BUSINESS DEVELOPMENT CENTERS.—

(A) IN GENERAL.—In carrying out the efficiency program, the Administrator shall enter into agreements with small business development centers under which small business development centers shall—

(i) provide access to information and resources on energy efficiency practices, including on-bill financing options;

(ii) conduct training and educational activities;

(iii) offer confidential, free, one-on-one, in-depth energy audits to owners and operators of small business concerns regarding energy efficiency practices;

(iv) give referrals to certified professionals and other providers of energy efficiency assistance that meet such standards for educational, technical, and professional competency as the Administrator shall establish;

(v) to the extent not inconsistent with controlling State public utility regulations, act as a facilitator between small business concerns, electric utilities, lenders, and the Administrator to facilitate on-bill financing arrangements;

(vi) provide necessary support to small business concerns to—

(I) evaluate energy efficiency opportunities and opportunities to design or construct high-performance green buildings;

(II) evaluate renewable energy sources, such as the use of solar and small wind energy to supplement power consumption;

(III) secure financing to achieve energy efficiency or to design or construct high-performance green buildings; and

(IV) implement energy efficiency projects;

(vii) assist owners and operators of small business concerns with the development and commercialization of clean technology products, goods, services, and processes that use renewable energy sources, dramatically reduce the use of natural resources, and cut or eliminate greenhouse gas emissions through—

(I) technology assessment;

(II) intellectual property;

(III) small business innovation research submissions under division H of subtitle II;

(IV) strategic alliances;

(V) business model development; and

(VI) preparation for investors; and

(viii) help small business concerns improve environmental performance by shifting to less hazardous materials and reducing waste and emissions, including by providing assistance for small business concerns to adapt the materials they use,

the processes they operate, and the products and services they produce.

(B) REPORTS.—A small business development center participating in the efficiency program shall submit to the Administrator and the Administrator of the Environmental Protection Agency an annual report that includes—

(i) a summary of the energy efficiency assistance provided by the small business development center under the efficiency program;

(ii) the number of small business concerns assisted by the small business development center under the efficiency program;

(iii) statistics on the total amount of energy saved as a result of assistance provided by that center under the efficiency program; and

(iv) any additional information that the Administrator, in consultation with the Association, determines to be necessary.

(C) REPORTS TO CONGRESS.—Not later than 60 days after the date on which all reports under subparagraph (B) relating to a year are submitted, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report summarizing the information regarding the efficiency program submitted by small business development centers participating in the efficiency program.

(3) ELIGIBILITY.—A small business development center shall be eligible to participate in the efficiency program only if the small business development center is accredited under section 27111(b) of this title.

(4) SELECTION OF PARTICIPATING STATE PROGRAMS.—From among small business development centers submitting applications to participate in the efficiency program, the Administrator—

(A) shall, to the maximum extent practicable, select small business development centers in such a manner as to promote a nationwide distribution of small business development centers participating in the efficiency program; and

(B) may not select more than one small business development center in a State to participate in the efficiency program.

(5) MATCHING REQUIREMENT.—Section 27102(g)(1) of this title shall apply to assistance made available under the efficiency program.

(6) GRANT AMOUNTS.—A small business development center selected to participate in the efficiency program under paragraph (4) shall be

eligible to receive a grant in an amount equal to not less than $100,000 nor more than $300,000 in each fiscal year.

(7) EVALUATION AND REPORT.—The Comptroller General shall—

(A) not later than 30 months after the date of disbursement of the first grant under the efficiency program, initiate an evaluation of the efficiency program; and

(B) not later than 6 months after the date of the initiation of the evaluation under subparagraph (A), submit to the Administrator, the Committee on Small Business and Entrepreneurship of the Senate, and the Committee on Small Business of the House of Representatives a report containing—

(i) the results of the evaluation; and

(ii) any recommendations regarding whether the efficiency program, with or without modification, should be extended to include the participation of all small business development centers.

(8) GUARANTEE.—To the extent not inconsistent with State law, the Administrator may guarantee the timely payment of a loan made to a small business concern through an on-bill financing agreement on such terms and conditions as the Administrator shall establish through a formal rulemaking, after providing notice and an opportunity for comment.

(9) IMPLEMENTATION.—Subject to amounts approved in advance in appropriations Acts and separate from amounts approved to carry out section 27102(a) of this title, the Administrator may make grants or enter into cooperative agreements to carry out this subsection.

(10) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to make grants and enter into cooperative agreements to carry out this subsection.

(11) TERMINATION.—The authority under this subsection shall terminate 4 years after the date of disbursement of the first grant under the efficiency program.

(d) TELECOMMUTING PILOT PROGRAM.—

(1) IN GENERAL.—The Administrator shall conduct, in not more than 5 regions of the Administration, a pilot program to provide information regarding telecommuting to small business concerns and to encourage small business concerns to offer telecommuting options to their employees.

(2) SPECIAL OUTREACH TO INDIVIDUALS WITH DISABILITIES.—In carrying out the telecommuting pilot program, the Administrator shall make a concerted effort to provide information to—

(A) small business concerns owned by or employing individuals with disabilities, particularly veterans who are individuals with disabilities;

(B) Federal, State, and local agencies having knowledge and expertise in assisting individuals with disabilities, including veterans who are individuals with disabilities; and

(C) any group or organization the primary purpose of which is to aid individuals with disabilities or veterans who are individuals with disabilities.

(3) PERMISSIBLE ACTIVITIES.—In carrying out the telecommuting pilot program, the Administrator may—

(A) produce educational materials and conduct presentations designed to raise awareness in the small business community of the benefits and the ease of telecommuting;

(B)(i) conduct outreach to small business concerns that are considering offering telecommuting options; and

(ii) conduct outreach as provided in paragraph (2); and

(C) acquire telecommuting technologies and equipment to be used for demonstration purposes.

(4) SELECTION OF REGIONS.—In determining which regions will participate in the telecommuting pilot program, the Administrator shall give priority consideration to regions in which Federal agencies and private-sector employers have demonstrated a strong regional commitment to telecommuting.

(5) REPORT.—Not later than 2 years after the date on which funds are first appropriated to carry out this subsection, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report containing the results of an evaluation of the telecommuting pilot program and any recommendations regarding whether the pilot program, with or without modification, should be extended to include the participation of all regions of the Administration.

(6) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administration $5,000,000 to carry out this subsection.

(7) TERMINATION.—The telecommuting pilot program shall terminate 4 years after the date on which funds are first appropriated to carry out this subsection.

§ 45110. Information regarding, and marketing of, programs for veterans and reservists

(a) IN GENERAL.—The Administrator and the Secretary of Defense shall develop a joint website and printed materials providing information regarding any program for small business concerns that is available to veterans or reservists.

(b) MARKETING.—The Administrator may—

(1) advertise and promote the program under section 21303 of this title jointly with the Secretary of Defense and veterans' service organizations; and

(2) advertise and promote participation by lenders in the program jointly with trade associations for banks or other lending institutions.

§ 45111. Outreach regarding health insurance options available to children

(a) DEFINITIONS.—In this section:

(1) MEDICAID PROGRAM.—The term ''Medicaid program'' means the program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2) STATE.—The term ''State'' has the meaning given the term for purposes of title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(3) STATE CHILDREN'S HEALTH INSURANCE PROGRAM.—The term ''State children's health insurance program'' means the State children's health insurance program established under title XXI of the Social Security Act (42 U.S.C. 1397aa et seq.).

(4) TASK FORCE.—The term ''task force'' means the task force established under subsection (b)(1).

(b) ESTABLISHMENT OF TASK FORCE.—

(1) ESTABLISHMENT.—There is established a task force to conduct a nationwide campaign of education and outreach for small business concerns regarding the availability of coverage for children through private insurance options, the Medicaid program, and the State children's health insurance program.

(2) MEMBERSHIP.—The task force shall consist of the Administrator, the Secretary of Health and Human Services, the Secretary of Labor, and the Secretary of the Treasury.

(3) RESPONSIBILITIES.—The campaign conducted under this subsection shall include—

(A) efforts to educate the owners of small business concerns about the value of health coverage for children;

(B) information regarding options available to the owners and employees of small business concerns to make insurance more affordable, including Federal and State tax deductions and credits for health care-related expenses and health insurance expenses and Federal tax exclusion for health insurance options available under employer-sponsored cafeteria plans under section 125 of the Internal Revenue Code of 1986 (26 U.S.C. 125);

(C) efforts to educate the owners of small business concerns about assistance available through public programs; and

(D) efforts to educate the owners and employees of small business concerns regarding the availability of the hotline operated as part of the Insure Kids Now program of the Department of Health and Human Services.

(4) IMPLEMENTATION.—In carrying out this subsection, the task force may—

(A) use any business partner of the Administration, including—

(i) a small business development center;

(ii) a certified development company;

(iii) a women's business center; and

(iv) SCORE;

(B) enter into—

(i) a memorandum of understanding with a chamber of commerce; and

(ii) a partnership with any appropriate small business concern or health advocacy group; and

(C) designate outreach programs at regional offices of the Department of Health and Human Services to work with district offices of the Administration.

(5) WEBSITE.—The Administrator shall ensure that links to information on the eligibility and enrollment requirements for the Medicaid program and State children's health insurance program of each State are prominently displayed on the website of the Administration.

(6) REPORT.—

(A) IN GENERAL.—Not later than February 4, 2011, and every 2 years thereafter, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report on the status of the nationwide campaign conducted under paragraph (1).

(B) CONTENTS.—A report under subparagraph (A) shall include a status update on all efforts made to educate owners and

employees of small business concerns on options for providing health insurance for children through public and private alternatives.

SEC. 4. CONFORMING AMENDMENTS TO POSITIVE LAW PROVISIONS OF THE UNITED STATES CODE.

(a) TITLE 5.—Title 5, United States Code, is amended—

(1) in section 601(3), by striking ''section 3 of the Small Business Act'' and inserting ''section 10101 of title 53''; and

(2) in section 3703(e)(2)(A), by striking ''section 3(a)(2) of the Small Business Act'' and inserting ''section 10101 of title 53''.

(b) TITLE 10.—Title 10, United States Code, is amended—

(1) in section 144—

(A) in subsection (b), by striking ''section 15(k) of the Small Business Act (15 U.S.C. 644(k))'' and inserting ''section 25109 of title 53''; and

(B) in subsection (c)(2), by striking ''Section 15(k) of the Small Business Act (15 U.S.C. 644(k))'' and inserting ''Section 25109 of title 53'';

(2) in section 2225(f)—

(A) in paragraph (3), by striking ''section 3(a) of the Small Business Act (15 U.S.C. 632(a))'' and inserting ''section 10101 of title 53'';

(B) in paragraph (4), by striking ''section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C))'' and inserting ''section 10101 of title 53''; and

(C) in paragraph (5), by striking ''section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D))'' and inserting ''section 10101 of title 53'';

(3) in section 2302(2)—

(A) in subparagraph (D), by striking ''section 15 of the Small Business Act (15 U.S.C. 644)'' and inserting ''chapter 251 of title 53,''; and

(B) in subparagraph (E), by striking ''section 9 of the Small Business Act (15 U.S.C. 638)'' and inserting ''chapters 261 and 263 of title 53'';

(4) in section 2304—

(A) in subsection (b)(2), by striking ''sections 9 and 15 of the Small Business Act (15 U.S.C. 638, 644)'' and inserting ''chapters 251, 261, and 263 of title 53''; and

(B) in subsection (f)(2)(D)(ii), by striking ''section 8(a) of the Small Business Act (15 U.S.C. 637(a))'' and inserting ''chapters 231 to 235 of title 53'';

(5) in subsections (c) and (f)(3) of section 2304b, by striking ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))'' and inserting ''section 24501 of title 53'';

(6) in section 2304c(a)(1), by striking ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))'' and inserting ''section 24501 of title 53'';

(7) in section 2304e(b)(1), by striking ''section 8 or 15 of the Small Business Act (15 U.S.C. 637 or 644)'' and inserting ''chapter 231, 233, 235, 241, 243, 245, 247, 251, or 257 of title 53'';

(8) in section 2319—

(A) in subsection (c)(4), by striking ''section 8(b)(7) of the Small Business Act (15 U.S.C. 637(b)(7))'' and inserting ''section 24108 of title 53''; and

(B) in subsection (d)(2), by striking ''section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''section 10101 of title 53'';

(9) in section 2320(a)(2)—

(A) in subparagraph (A), by striking ''section 9(j)(2) of the Small Business Act (15 U.S.C. 638(j)(2))'' and inserting ''paragraph (2)(E), (8), (9), (10), (11), (12), (13), or (14) of subsection (b) of section 26304 of title 53''; and

(B) in subparagraph (E)(i)—

(i) by striking ''(15 U.S.C. 638 note)''; and

(ii) by striking ''(15 U.S.C. 631)'';

(10) in section 2323—

(A) in subsection (a)—

(i) in paragraph (1)(A)—

(I) by striking ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' and inserting ''chapter 221 of title 53,''; and

(II) by striking ''section 3(p) of the Small Business Act'' and inserting ''section 10101 of title 53''; and

(ii) in paragraph (3), by striking ''section 8(d)(4)(B) of the Small Business Act (15 U.S.C. 637(d)(4)(B))'' and inserting ''section 24303(b) of title 53'';

(B) in subsection (e)—

(i) in the first sentence of paragraph (3)(A), by striking ''section 8(a) of the Small Business Act'' and inserting ''chapters 231 to 235 of title 53''; and

(ii) in paragraph (5)—

(I) in subparagraph (C)—

(aa) in clause (ii), by striking ''section 8(a) of the Small Business Act (15 U.S.C. 637(a))'' and inserting ''chapters 231 to 235 of title 53''; and

(bb) in clause (iii), by striking ''section 15(a) of the Small Business Act (15 U.S.C. 644(a))'' and inserting ''section 25101 of title 53'';

(II) in subparagraph (E), by striking ''under section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and under the small business set-aside program established under section 15(a) of the Small Business Act (15 U.S.C. 644(a))'' and inserting ''under chapters 231 to 235 of title 53 and under the small business set-aside program established under section 25101 of title 53''; and

(III) in subparagraph (F), by striking ''section 8(a) of the Small Business Act (15 U.S.C. 637(a))'' and inserting ''chapters 231 to 235 of title 53'';

(C) in subsection (f)—

(i) in paragraph (1), by striking ''section 3(p) of the Small Business Act'' and inserting ''section 10101 of title 53''; and

(ii) in paragraph (2), by striking ''section 15(*o*)(1) of the Small Business Act (15 U.S.C. 644(*o*)(1))'' and inserting ''section 25113 of title 53''; and

(D) in subsection (h), by striking ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' each place it appears and inserting ''chapter 243 of title 53'';

(11) in section 2323a, in the matter preceding paragraph (1), by striking ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' and inserting ''chapter 243 of title 53'';

(12) in section 2382(c)(4), by striking ''section 3(a) of the Small Business Act (15 U.S.C. 632(a))'' and inserting ''section 10101 of title 53'';

(13) in section 2410d(b)(1), by striking ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' and inserting ''chapter 243 of title 53'';

(14) in section 2500, by striking paragraphs (11) and (12) and inserting the following:

"(11) The term 'Small Business Innovation Research Program' means the program established under section 10710(a), paragraphs (4) to (6) of section 26102, sections 26301 to 26304, section 26310, and section 26341 of title 53.

"(12) The term 'Small Business Technology Transfer Program' means the program established under section 10710(a), paragraphs (4) to (6) of section 26102, and sections 26321 to 26323 of title 53.";

(15) in section 2855(b)—

(A) in paragraph (1)(B), by striking "the Small Business Act (15 U.S.C. 631 et seq.)" and inserting "subtitle II of title 53"; and

(B) in paragraph (3), by striking "section 8(a) of the Small Business Act (15 U.S.C. 637(a))" and inserting "chapters 231 to 235 of title 53";

(16) in section 3024—

(A) in subsection (b), by striking "section 15(k) of the Small Business Act (15 U.S.C. 644(k))" and inserting "section 25109 of title 53"; and

(B) in subsection (c)(2), by striking "Section 15(k) of the Small Business Act (15 U.S.C. 644(k))" and inserting "Section 25109 of title 53";

(17) in section 5028—

(A) in subsection (b), by striking "section 15(k) of the Small Business Act (15 U.S.C. 644(k))" and inserting "section 25109 of title 53"; and

(B) in subsection (c)(2), by striking "Section 15(k) of the Small Business Act (15 U.S.C. 644(k))" and inserting "Section 25109 of title 53"; and

(18) in section 8024—

(A) in subsection (b), by striking "section 15(k) of the Small Business Act (15 U.S.C. 644(k))" and inserting "section 25109 of title 53"; and

(B) in subsection (c)(2), by striking "Section 15(k) of the Small Business Act (15 U.S.C. 644(k))" and inserting "Section 25109 of title 53".

(c) TITLE 11.—Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking "a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the

Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958'' and inserting ''a new markets venture capital company (as defined in section 30501 of title 53), a small business investment company (as defined in section 30501 of title 53)''; and

(2) in section 1102(a)(4), by striking ''section 3(a)(1) of the Small Business Act'' and inserting ''subparagraphs (A) and (B) of section 10101(70) of title 53''.

(d) TITLE 13.—Title 13, United States Code, is amended in section 91(d)(4)(A) by striking ''section 3(a) of the Small Business Act'' and inserting ''section 10101 of title 53''.

(e) TITLE 14.—Title 14, United States Code, is amended—

(1) in section 681(a), by striking ''section 8(a) of the Small Business Act (15 U.S.C. 637(a))'' and inserting ''chapters 231 to 235 of title 53''; and

(2) in section 687(g)(3), by striking ''section 8(a) of the Small Business Act (15 U.S.C. 637(a))'' and inserting ''chapters 231 to 235 of title 53''.

(f) TITLE 18.—Title 18, United States Code, is amended—

(1) in section 20(5), by striking ''section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662)'' and inserting ''section 30101 of title 53''; and

(2) in section 1014, by striking ''section 103 of the Small Business Investment Act of 1958 (15 U.S.C. 662)'' and inserting ''section 30101 of title 53''.

(g) TITLE 23.—Title 23, United States Code, is amended in section 505(b)(3) by striking ''section 9 of the Small Business Act (15 U.S.C. 638)'' and inserting ''chapters 261 and 263 of title 53''.

(h) TITLE 31.—Title 31, United States Code, is amended—

(1) in section 3554(c)(2), by striking ''(within the meaning of section 3(a) of the Small Business Act)'' and inserting ''(as defined in section 10101 of title 53)'';

(2) in section 3718(b)—

(A) in paragraph (1)(B), by striking ''(as defined in section 3(p) of the Small Business Act)'' and inserting ''(as defined in section 10101 of title 53)''; and

(B) by striking paragraph (3) and inserting the following:

''(3) Each agency shall use its best efforts to assure that not less than 10 percent of the amounts of all claims referred to private counsel by that agency under paragraph (2) are referred to law firms owned and controlled by socially and economically disadvantaged individuals

and law firms that are qualified HUBZone small business concerns. For purposes of this paragraph—

"(A) the term 'law firm owned and controlled by socially and economically disadvantaged individuals' means a law firm that meets the requirements set forth in clauses (i) and (ii) of section 10101(72)(A) of title 53 and regulations issued under those clauses;

"(B) 'socially and economically disadvantaged individuals' shall be presumed to include the groups and individuals described in subclause (1)(B) of the contract clause described in section 24301(c) of title 53; and

"(C) the term 'qualified HUBZone small business concern' has the meaning given the term in section 10101 of title 53."; and

(3) in section 6701(f)(3)—

(A) in subparagraph (A), by striking "section 3 of the Small Business Act" and inserting "section 10101 of title 53";

(B) in subparagraph (B), by striking "has the meaning such term has under section 8(d) of the Small Business Act and relevant subcontracting regulations promulgated pursuant to that section" and inserting "has the meaning that the term has for purposes of chapter 243 of title 53 (including relevant regulations promulgated under that chapter)"; and

(C) in subparagraph (C), by striking "section 3(p) of the Small Business Act (15 U.S.C. 632(*o*))" and inserting "section 10101 of title 53".

(i) TITLE 35.—Title 35, United States Code, is amended—

(1) in section 41(h)(1), by striking "as defined under section 3 of the Small Business Act" and inserting "(as defined in section 10101 of title 53)"; and

(2) in section 201(h), by striking "as defined at section 2 of Public Law 85–536 (15 U.S.C. 632)" and inserting "as defined in section 10101 of title 53".

(j) TITLE 38.—Title 38, United States Code, is amended—

(1) in section 3117(b)(1), by striking "section 8 of the Small Business Act (15 U.S.C. 633(b))" and inserting "section 10321(*o*) of title 53";

(2) in section 3452—

(A) in the third sentence of subsection (b), by striking "section 7(i)(1) of the Small Business Act (15 U.S.C. 636(i)(1))" and inserting "section 20504 of title 53";

(B) in subsection (h)—

(i) in paragraph (1), by striking ''section 21 of the Small Business Act (15 U.S.C. 648)'' and inserting ''chapter 271 of title 53''; and

(ii) in paragraph (2), by striking ''section 33 of the Small Business Act (15 U.S.C. 657c))'' and inserting ''section 27514 of title 53''; and

(C) in paragraphs (1) and (2) of section 3742(d), by striking ''the Small Business Act (15 U.S.C. 631 et seq.)'' and inserting ''subtitle II of title 53''; and

(3) in section 3675(c)(2), by striking ''(as defined pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a)))'' and inserting ''(as defined in section 10101 of title 53)''.

(k) TITLE 39.—Section 3641(h) of title 39, United States Code, is amended by striking ''section 3 of the Small Business Act'' and inserting ''section 10101 of title 53''.

(l) TITLE 44.—Title 44, United States Code, is amended—

(1) in subsections (c)(4) and (i)(1) of section 3506, by striking ''section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''section 10101 of title 53''; and

(2) in section 3520—

(A) in subsections (c)(2) and (h), by striking ''section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''section 10101 of title 53''; and

(B) in subsections (e)(3) and (f)(3), by striking ''section 30(b) of the Small Business Act (15 U.S.C. 657(b))'' and inserting ''section 10312(b) of title 53''.

(m) TITLE 46.—Section 54101(h)(1) of title 46, United States Code, is amended by striking ''(within the meaning of section 3 of the Small Business Act (15 U.S.C. 632))'' and inserting ''(as defined in section 10101 of title 53)''.

(n) TITLE 49.—Title 49, United States Code, is amended—

(1) in section 13709(h)(1)(A), by striking ''small-business concern under the Small Business Act (15 U.S.C. 631 et seq.)'' and inserting ''small business concern under subtitles I and II of title 53'';

(2) in section 40110(d)(2)(D), by striking ''The Small Business Act (15 U.S.C. 631 et seq.)'' and inserting ''Subtitles I and II of title 53'';

(3) in section 46301(i), by striking ''section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''section 10101 of title 53'';

(4) in paragraphs (2), (4)(B), and (6) of section 47107(e), by striking ''(as defined in section 3(p) of the Small Business Act)'' and inserting ''(as defined in section 10101 of title 53)''; and

(5) in section 47113(a)—

(A) in paragraph (1)(A), by striking ''section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''section 10101 of title 53'';

(B) in paragraph (2), by striking ''in section 8(d) of the Act (15 U.S.C. 637(d)) and relevant subcontracting regulations prescribed under section 8(d)'' and inserting ''for purposes of chapter 221 of title 53 (including relevant subcontracting regulations prescribed under that chapter)''; and

(C) in paragraph (3), by striking ''section 3(p) of the Small Business Act (15 U.S.C. 632(*o*))'' and inserting ''section 10101 of title 53''.

SEC. 5. CONFORMING AMENDMENTS TO NON-POSITIVE LAW PROVISIONS OF THE UNITED STATES CODE.

(a) TITLE 6.—

(1) Section 853(c) of the Homeland Security Act of 2002 (6 U.S.C. 423(c)) is amended by striking ''section 15(j) of the Small Business Act (15 U.S.C. 644(j))'' and inserting ''section 25108 of title 53, United States Code,''.

(2) Section 856(b) of the Homeland Security Act of 2002 (6 U.S.C. 426(b)) is amended by striking ''Subclause (II) of section 8(a)(1)(D)(i) of the Small Business Act (15 U.S.C. 637(a)(1)(D)(i)) and clause (ii) of section 31(b)(2)(A) of such Act (15 U.S.C. 657a(b)(2)(A))'' and inserting ''sections 23305(a)(2) and 25303(3) of title 53, United States Code,''.

(b) TITLE 7.—

(1) Section 623(a) of the Agricultural Credit Act of 1987 (7 U.S.C. 1985 note, Public Law 100–233) is amended by striking ''section 8(a)(5) of the Small Business Act (15 U.S.C. 637(a)(5))'' and inserting ''section 10101 of title 53, United States Code,''.

(2) Section 352 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2000) is amended—

(A) in subsection (a)(3), by striking ''the Small Business Act (15 U.S.C. 631 et seq.)'' and inserting ''subtitle II of title 53, United States Code,''; and

(B) in subsection (b)(1)(B), by striking ''the Small Business Act (15 U.S.C. 631 et seq.)'' and inserting ''subtitle II of title 53, United States Code''.

(3) Section 1462(b) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3310(b)) is amended

by striking ''section 9 of the Small Business Act (15 U.S.C. 638)'' and inserting ''chapters 261 and 263 of title 53, United States Code''.

(4) Section 203(f)(4)(B) of the Agricultural Trade Act of 1978 (7 U.S.C. 5623(f)(4)(B)) is amended by striking ''small-business concern described in section 3(a) of the Small Business Act (15 U.S.C. 632(a))'' and inserting ''small business concern (as defined in section 10101 of title 53, United States Code)''.

(5) Section 1670(a)(5) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5923(a)(5)) is amended by striking ''the term 'small-business concern' by section 3(a) of the Small Business Act'' and inserting ''the term 'small business concern' in section 10101 of title 53, United States Code''.

(6) Section 404(d)(3) of the Agricultural Research, Extension, and Education Reform Act of 1998 (7 U.S.C. 7624(d)(3)) is amended by striking ''section 9 of the Small Business Act (15 U.S.C. 638)'' and inserting ''chapters 261 and 263 of title 53, United States Code''.

(c) TITLE 10.—

(1) Section 817(a)(2)(D)(ii) of the National Defense Authorization Act for Fiscal Year 2006 (10 U.S.C. 2302 note, Public Law 109–163) is amended by striking ''section 8(a) of the Small Business Act (15 U.S.C. 637(a))'' and inserting ''chapters 231 to 235 of title 53, United States Code''.

(2) Section 853(c) of the National Defense Authorization Act for Fiscal Year 2004 (10 U.S.C. 2302 note, Public Law 108–136) is amended by striking ''section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1))'' and inserting ''section 25106(a) of title 53, United States Code''.

(3) Section 812(e) of the National Defense Authorization Act for Fiscal Year 2000 (10 U.S.C. 2302 note, Public Law 106–65) is amended by striking ''the same meaning as the meaning of such term as used in the Small Business Act (15 U.S.C. 631 et seq.)'' and inserting ''the meaning given the term 'small business concern' in section 10101 of title 53, United States Code''.

(4) Section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2302 note, Public Law 101–510) is amended—

(A) in subsection (f)(7)(A), by striking ''section 21 of the Small Business Act (15 U.S.C. 648)'' and inserting ''chapter 271 of title 53, United States Code'';

(B) in subsection (h)—

(i) in paragraph (1), by striking ''the Small Business Act'' and inserting ''subtitles I and II of title 53, United States Code''; and

(ii) in paragraph (2)—

(I) by striking ''section 8 of the Small Business Act (15 U.S.C. 637)'' and inserting ''chapters 231 to 235 of title 53, United States Code''; and

(II) by striking ''the Small Business Act'' and inserting ''subtitle I or II of title 53, United States Code'';

(C) in subsection (k), by striking ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' and inserting ''chapter 243 of title 53, United States Code,''; and

(D) in subsection (m)—

(i) in paragraph (1), by striking ''section 3(a) of the Small Business Act (15 U.S.C. 632(a))'' and inserting ''section 10101(70) of title 53, United States Code,'';

(ii) in paragraph (2)—

(I) in subparagraph (B), by striking ''section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13))'' and inserting ''section 23101 of title 53, United States Code,'';

(II) in subparagraph (C), by striking ''section 8(a)(15) of the Small Business Act (15 U.S.C. 637(a)(15))'' and inserting ''section 10101 of title 53, United States Code'';

(III) in subparagraph (E), by striking ''section 8(d)(3)(D) of the Small Business Act (15 U.S.C. 637(d)(3)(D))'' and inserting ''section 10101 of title 53, United States Code'';

(IV) in subparagraph (F), by striking ''section 8(d)(3) of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code''; and

(V) in subparagraph (G), by striking ''section 3(p) of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code'';

(iii) in paragraph (3), by striking ''in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C))'' and inserting ''for purposes of chapter 243 of title 53, United States Code''; and

(iv) in paragraph (6), by striking ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' and inserting ''chapter 221 of title 53, United States Code''.

(5) Section 2723(c) of Public Law 98–369 (10 U.S.C. 2304 note) is amended by striking ''section 8(a) of the Small Business Act (15 U.S.C. 637(a))'' and inserting ''chapters 231 to 235 of title 53, United States Code''.

(6) Section 8025(b) of the Department of Defense Appropriations Act, 2004 (10 U.S.C. 2410d note, Public Law 108–87), is amended by striking ''section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' and inserting ''chapter 243 of title 53, United States Code,''.

(7) Section 2912(b) of the National Defense Authorization Act for Fiscal Year 1994 (10 U.S.C. 2687 note, Public Law 103–160) is amended—

(A) in paragraph (1), by striking ''means a business concern meeting the requirements of section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''has the meaning given the term in section 10101 of title 53, United States Code''; and

(B) in paragraph (2), by striking ''the business concerns referred to in section 8(d)(1) of such Act'' and inserting ''a qualified HUBZone small business concern, small business concern owned and operated by service-disabled veterans, small business concern owned and operated by socially and economically disadvantaged individuals, small business concern owned and operated by veterans, small business concern owned and operated by women, or other small business concern (as those terms are defined in section 10101 of title 53, United States Code)''.

(d) TITLE 12.—

(1) Section 2(b)(1) of the Export-Import Bank Act of 1945 (12 U.S.C. 635(b)(1)) is amended—

(A) in subparagraph (E)—

(i) in clause (iii)(II), by striking ''socially and economically disadvantaged small business concerns (as defined in section 8(a)(4) of the Small Business Act), small business concerns (as defined in section 3(a) of the Small Business Act) owned by women, and small business concerns (as defined in section 3(a) of the Small Business Act)'' and inserting ''small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 10101 of title 53, United States Code), small business concerns (as defined in section 10101 of title 53, United States Code)

owned by women, and other small business concerns (as defined in section 10101 of title 53, United States Code),'';

(ii) in clause (v), by striking ''(as defined under section 3 of the Small Business Act)'' and inserting ''(as defined in section 10101 of title 53, United States Code),''; and

(iii) in clause (vii)(I), by striking ''section 103 of the Small Business Investment Act of 1958'' and inserting ''section 30101 of title 53, United States Code,''; and

(B) in subparagraph (H)(iii), by striking ''(as such term is defined in section 3 of the Small Business Act)'' and inserting ''(as defined in section 10101 of title 53, United States Code),''.

(2) Section 8 of the Export-Import Bank Act of 1945 (12 U.S.C. 635g) is amended—

(A) in subsection (c), by striking ''(as defined in section 3(a) of the Small Business Act)'' and inserting ''(as defined in section 10101 of title 53, United States Code)'';

(B) in subsection (d), by striking ''(as defined in section 3(a) of the Small Business Act)'' and inserting ''(as defined in section 10101 of title 53, United States Code)''; and

(C) in subsection (e), by striking ''socially and economically disadvantaged small business concerns (as defined in section 8(a)(4) of the Small Business Act), small business concerns (as defined in section 3(a) of the Small Business Act) owned by women, and small business concerns (as defined in section 3(a) of the Small Business Act)'' and inserting ''small business concerns owned and controlled by socially and economically disadvantaged individuals (as defined in section 10101 of title 53, United States Code), small business concerns (as defined in section 10101 of title 53, United States Code) owned by women, and other small business concerns (as defined in section 10101 of title 53, United States Code)''.

(3) Section 11(h) of the Federal Home Loan Bank Act (12 U.S.C. 1431(h)) is amended by striking ''formed pursuant to section 301 of the Small Business Investment Act of 1958'' and inserting ''(as defined in section 30301 of title 53, United States Code)''.

(4) Section 21A(b)(13) of the Federal Home Loan Bank Act (12 U.S.C. 1441a(b)(13)) is amended by striking ''(as defined in section 3(p) of the Small Business Act)'' and inserting ''(as defined in section 10101 of title 53, United States Code),''.

(5) Section 5(c)(4) of the Home Owners' Loan Act (12 U.S.C. 1464(c)(4)) is amended—

(A) in subparagraph (D), by striking ''small business investment company formed pursuant to section 301(d) of the Small Business Investment Act of 1958'' and inserting ''specialized small business investment company (as defined in section 30301 of title 53, United States Code)''; and

(B) in subparagraph (F), by striking ''New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958'' and inserting ''new markets venture company (as defined in section 30301 of title 53, United States Code)''.

(6) Section 951(c)(3) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1833a(c)(3)) is amended by striking ''section 16(a) of the Small Business Act (15 U.S.C. 645(a))'' and inserting ''section 10501 of title 53, United States Code''.

(7) Section 208(i)(8) of the Small Business Loan Securitization and Secondary Market Enhancement Act of 1994 (12 U.S.C. 1835(i)(8)) is amended by striking ''section 3(a) of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code''.

(8) Section 103(b)(1)(A) of the National Consumer Cooperative Bank Act (12 U.S.C. 3013(b)(1)(A)) is amended by striking ''section 3 of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code''.

(9) Section 103(6) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(6)) is amended by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code''.

(e) TITLE 15.—

(1) Section 3(c) of the Securities Act of 1933 (15 U.S.C. 77c(c)) is amended by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code,''.

(2) Section 304(e) of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd(e)) is amended by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code,''.

(3) Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(A) in paragraph (53)(B)(ii), by striking ''section 3(a) of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code''; and

(B) in paragraph (54)(A)(iv), by striking ''licensed by the United States Small Business Administration under section 301(c) or (d) of the Small Business Investment Act of 1958'' and insert-

ing ''(as defined in section 30101 of title 53, United States Code)''.

(4) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended—

(A) in paragraph (46)(B), by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code,''; and

(B) in paragraph (47)(C), by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code''.

(5) Section 18(k) of the Investment Company Act of 1940 (15 U.S.C. 80a–18(k)) is amended by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code''.

(6) Section 61(a)(4) of the Investment Company Act of 1940 (15 U.S.C. 80a–60(a)(4)) is amended by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code,''.

(7) Section 234 of the Disaster Relief Act of 1970 (15 U.S.C. 636b) is amended in the second sentence by striking ''sections 231, 232, 236(b) and 237'' and inserting ''section 236(b)''.

(8) Section 235 of the Disaster Relief Act of 1970 (15 U.S.C. 636c) is amended by striking ''section 231, 232, or 233'' and inserting ''section 233''.

(9) Section 237(a) of the Disaster Relief Act of 1970 (15 U.S.C. 636d(a)) is amended in the first sentence by striking ''The Small Business Administration in the case of a nonagricultural enterprise, and the Farmers Home Administration in the case of an agricultural enterprise, are authorized to provide any industrial, commercial, agricultural, or other enterprise, which'' and inserting ''The Secretary of Agriculture may provide an agricultural enterprise that''.

(10) Section 704(a)(9) of the Consumer Credit Protection Act (15 U.S.C. 1691c(a)(9)) is amended by striking ''The Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code''.

(f) TITLE 16.—

(1) Section 14(i)(1) of the National Forest Management Act of 1976 (16 U.S.C. 472a(i)(1)) is amended by striking ''the Small Business Act, as amended'' and inserting ''subtitles I and II of title 53, United States Code''.

(2) Section 329(c)(1) of the Department of the Interior and Related Agencies Appropriations Act, 1999 (16 U.S.C. 535a(c)(1)), is amended by striking ''the Small Business Act (15 U.S.C. 631 et seq.)'' and inserting ''subtitles I and II of title 53, United States Code''.

(3) Section 705(f) of the Alaska National Interest Lands Conservation Act (16 U.S.C. 539d(f)) is amended by striking ''the Small Business Act as amended (15 U.S.C. 631 et seq.)'' and inserting ''subtitles I and II of title 53, United States Code''.

(g) TITLE 19.—

(1) Section 254(c) of the Trade Act of 1974 (19 U.S.C. 2344(c)) is amended by ''striking section 7(a) of the Small Business Act'' and inserting ''division B of subtitle II of title 53, United States Code''.

(2) Section 255(d)(1) of the Trade Act of 1974 (19 U.S.C. 2345(d)(1)) is amended by striking ''the Small Business Act'' and inserting ''subtitles I and II of title 53, United States Code,''.

(3) Section 256(a) of the Trade Act of 1974 (19 U.S.C. 2346(a)) is amended by striking ''the Small Business Act'' and inserting ''subtitles I and II of title 53, United States Code''.

(h) TITLE 20.—Section 142 of the Higher Education Act of 1965 (20 U.S.C. 1018a) is amended—

(1) in subsection (d)(2)(A), by striking ''subsections (e), (f), and (g) of section 8 of the Small Business Act (15 U.S.C. 637)'' and inserting ''section 24501 of title 53, United States Code'';

(2) in subsection (g)(6), by striking ''section 8(h) of the Small Business Act (15 U.S.C. 637(h))'' and inserting ''section 24701 of title 53, United States Code,''; and

(3) in subsection (h)(1)(B), by striking ''section 15(a) of the Small Business Act (15 U.S.C. 644(a))'' and inserting ''section 25101 of title 53, United States Code''.

(i) TITLE 22.—Section 310(c)(1) of the Chemical Weapons Convention Implementation Act of 1998 (22 U.S.C. 6729(c)(1)) is amended by striking ''section 3 of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code''.

(j) TITLE 23.—

(1) Section 1101(b)(1) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (23 U.S.C. 101 note, Public Law 109–59) is amended—

(A) in subparagraph (A), by striking ''section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''section 10101 of title 53, United States Code''; and

(B) in subparagraph (B), by striking "section 8(d) of the Small Business Act (15 U.S.C. 637(d))" and inserting "chapter 243 of title 53, United States Code,".

(2) Section 1101(b) of the Transportation Equity Act for the 21st Century (23 U.S.C. 101 note, Public Law 105–178) is amended—

(A) in subparagraph (A), by striking "section 3 of the Small Business Act (15 U.S.C. 632)" and inserting "section 10101 of title 53, United States Code"; and

(B) in subparagraph (B), by striking "section 8(d) of the Small Business Act (15 U.S.C. 637(d))" and inserting "chapter 243 of title 53, United States Code,".

(k) TITLE 25.—

(1) Section 105(a)(3)(C)(ii)(X) of the Indian Self-Determination Act (25 U.S.C. 450j(a)(3)(C)(ii)(X)) is amended by striking "The Small Business Act (15 U.S.C. 631 et seq.)" and inserting "Subtitles I and II of title 53, United States Code".

(2) Section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) is amended in subsections (h) and (i) by striking "section 410 of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, 694a)" and inserting "section 32101 of title 53, United States Code".

(3) Section 218(b)(1) of the Indian Financing Act of 1974 (25 U.S.C. 1497a(b)(1)) is amended by striking "section 411 of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661, 694b)" and inserting "section 32102 of title 53, United States Code".

(l) TITLE 29.—Section 211 of the Assistive Technology Act of 1998 (29 U.S.C. 3031) is amended—

(1) in subsection (a), by striking "small-business concern, as described in section 3(a) of the Small Business Act (15 U.S.C. 632(a))" and inserting "small business concern (as defined in section 10101 of title 53, United States Code)"; and

(2) in subsection (b)—

(A) in the first sentence, by striking "section 9(g) of the Small Business Act (15 U.S.C. 638(g))" and inserting "section 26302 of title 53, United States Code"; and

(B) in the second sentence, by striking "section 9(f) of such Act (15 U.S.C. 638(g))" and inserting "section 26301 of title 53, United States Code".

(m) TITLE 26.—

(1) Section 243(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 243(a)(2)) is amended by striking "the Small Business Invest-

ment Act of 1958 (15 U.S.C. 661 and following)'' and inserting ''subtitle III of title 53, United States Code''.

(2) Section 246A(b)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 246A(b)(2)) is amended by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code''.

(3) Section 514(c)(6)(A)(ii) of the Internal Revenue Code of 1986 (26 U.S.C. 514(c)(6)(A)(ii)) is amended—

(A) in the matter preceding subclause (I), by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code,''; and

(B) in subclause (I), by striking ''section 303(a) of such Act'' and inserting ''section 30304 of that title''.

(4) Section 542(c)(8) of the Internal Revenue Code of 1986 (26 U.S.C. 542(c)(8)) is amended by striking ''the Small Business Investment Act of 1958 (15 U.S.C. 661 and following)'' and inserting ''subtitle III of title 53, United States Code,''.

(5) Section 582(c)(2)(A)(iii) of the Internal Revenue Code of 1986 (26 U.S.C. 582(c)(2)(A)(iii)) is amended by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code''.

(6) Section 1242(1) of the Internal Revenue Code of 1986 (26 U.S.C. 1242(1)) is amended by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code''.

(7) Section 1243 of the Internal Revenue Code of 1986 (26 U.S.C. 1243) is amended—

(A) in the matter preceding paragraph (1), by striking ''the Small Business Investment Act of 1958'' and inserting ''subtitle III of title 53, United States Code''; and

(B) in paragraph (1), by striking ''section 304 of the Small Business Act of 1958'' and inserting ''section 30305 of title 53, United States Code''.

(n) TITLE 33.—Section 5(b)(3)(A) of the Act of August 18, 1941 (33 U.S.C. 701n(b)(3)(A)), is amended by striking ''section 7(b)(2) of the Small Business Act'' and inserting ''section 21302 of title 53, United States Code''.

(o) TITLE 41.—

(1) Section 303 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253) is amended—

(A) in subsection (b)(2), by striking ''sections 9 and 15 of the Small Business Act'' and inserting ''chapters 251, 261, and 263 of title 53, United States Code''; and

(B) in subsection (f)(2)(D), by striking ''section 8(a) of the Small Business Act'' and inserting ''chapters 231 to 235 of title 53, United States Code''.

(2) Section 303C of the Federal Property and Administrative Services Act (41 U.S.C. 253c) is amended—

(A) in subsection (c)(5), by striking ''section 8(b)(7) of the Small Business Act'' and inserting ''section 24108 of title 53, United States Code,''.

(B) in subsection (d)(2), by striking ''section 3 of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code''.

(3) Section 303I of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253i) is amended—

(A) in subsection (c), by striking ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))'' and inserting ''section 24501 of title 53, United States Code,''; and

(B) in subsection (f)(3), by striking ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))'' and inserting ''section 24501 of title 53, United States Code''.

(4) Section 303J(a)(1) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253j(a)(1)) is amended by striking ''section 8(e) of the Small Business Act (15 U.S.C. 637(e))'' and inserting ''section 24501 of title 53, United States Code''.

(5) Section 309(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 259(b)) is amended—

(A) in paragraph (4), by striking ''section 15 of the Small Business Act'' and inserting ''chapter 251 of title 53, United States Code,''; and

(B) in paragraph (5), by striking ''section 9 of the Small Business Act'' and inserting ''chapters 261 and 263 of title 53, United States Code''.

(6) Section 8304(4) of the Federal Acquisition Streamlining Act of 1964 (41 U.S.C. 264 note, Public Law 103–355) is amended by striking ''subsections (a) and (d) of section 8 of the Small Business Act (15 U.S.C. 637 (a) and (d))'' and inserting ''chapters 231 to 235 and 243 of title 53, United States Code''.

(7) Section 6(d) of the Office of Federal Procurement Policy Act (41 U.S.C. 405(d)) is amended in paragraphs (11) and (12) by striking

"(as defined in section 3(p) of the Small Business Act)" and inserting "(as defined in section 10101 of title 53, United States Code)".

(8) Section 18(c)(1)(C)(ii) of the Office of Federal Procurement Policy Act (41 U.S.C. 416(c)(1)(C)(ii)) is amended by striking "section 9 of the Small Business Act" and inserting "chapters 261 and 263 of title 53, United States Code".

(9) Section 502 of the Women's Business Ownership Act of 1988 (41 U.S.C. 417a) is amended by striking subsection (b) and inserting the following:

"(b) DEFINITIONS.—In this section, the terms 'qualified HUBZone small business concern', 'small business concern owned and controlled by socially and economically disadvantaged individuals', and 'small business concern owned and controlled by women' have the meanings given the terms in section 10101 of title 53, United States Code.".

(10) Section 22(c)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 418a(c)(2)) is amended by striking "section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97–219; 15 U.S.C. 638 note), and the declaration of policy in section 2 of the Small Business Act (15 U.S.C. 631)" and inserting "section 2(b) of the Small Business Innovation Development Act of 1982 (Public Law 97–219), and the declaration of policy in section 2 of the Small Business Act (Public Law 85–536)".

(11) Section 32 of the Federal Procurement Policy Act (41 U.S.C. 428) is amended—

(A) in subsection (a)(1), by striking "section 8(a) of the Small Business Act (15 U.S.C. 637(a))" and inserting "chapters 231 to 235 of title 53, United States Code"; and

(B) in subsection (b), by striking "section 15(j) of the Small Business Act (15 U.S.C. 644(j))" and inserting "section 25108 of title 53, United States Code,".

(12) Section 35(a)(3)(A) of the Federal Procurement Policy Act (41 U.S.C. 431(a)(3)(A)) is amended by striking "section 15 of the Small Business Act (15 U.S.C. 644)" and inserting "chapter 251 of title 53, United States Code".

(p) TITLE 42.—

(1) Section 1701(a)(7)(A) of the Public Health Service Act (42 U.S.C. 300u(a)(7)(A)) is amended by striking "small businesses (as defined in section 3 of the Small Business Act)" and inserting "small business concerns (as defined in section 10101 of title 53, United States Code)".

(2) The matter under the heading ''SMALL AND DISADVANTAGED BUSINESS'' under the heading ''ADMINISTRATIVE PROVISIONS'' under the heading ''NATIONAL AERONAUTICS AND SPACE ADMINISTRATION'' in title III of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1990 (42 U.S.C. 2473b), is amended by striking ''(within the meaning of section 637(a) (5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) (6))'' and inserting ''(as defined in section 10101 of title 53, United States Code)''.

(3) Section 808(f)(7) of Public Law 90–284 (42 U.S.C. 3608(f)(7)) is amended by striking ''section 8(a) of the Small Business Act'' and inserting ''chapters 231 to 235 of title 53, United States Code''.

(4) The first undesignated paragraph under the heading ''ADMINISTRATIVE PROVISIONS'' under the heading ''ENVIRONMENTAL PROTECTION AGENCY'' in title III of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (42 U.S.C. 4370d), is amended by striking ''(within the meaning of section 8(a) (5) and (6) of the Small Business Act (15 U.S.C. 637(a) (5) and (6)))'' and inserting ''(as defined in section 10101 of title 53, United States Code)''.

(5) Section 406(a)(3)(A)(ii)(I) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5172(a)(3)(A)(ii)(I)) is amended by striking ''section 7(b) of the Small Business Act (15 U.S.C. 636(b))'' and inserting ''chapter 213 of title 53, United States Code''.

(6) Section 622(c) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5197h(c)) is amended by striking ''(as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p))) and inserting ''(as defined in section 10101 of title 53, United States Code)''.

(7) Section 102(a)(23) of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(23)) is amended by striking ''a business that meets the criteria set forth in section 3(a) of the Small Business Act'' and inserting ''a small business concern (as defined in section 10101 of title 53, United States Code)''.

(8) Section 105(a)(15) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)(15)) is amended by striking ''entities organized under section 301(d) of the Small Business Investment Act of 1958'' and inserting ''specialized small business investment companies (as defined in section 30301 of title 53, United States Code) organized''.

(9) Section 362(f)(5)(B) of the Energy Policy and Conservation Act (42 U.S.C. 6322(f)(5)(B)) is amended by striking ''section 3(a) of the Small Business Act (15 U.S.C. 632(a))'' and inserting ''section 10101 of title 53, United States Code,''.

(10) Section 3159(a)(1) of the National Defense Authorization Act for Fiscal Year 1994 (42 U.S.C. 7256 note, Public Law 103–1956) is amended by striking ''section 8(d) of the Small Business Act (15 U.S.C. 637(d)) and regulations issued under that section'' and inserting ''chapter 243 of title 53, United States Code, and regulations issued under that chapter''.

(11) Section 3135(b)(2) of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7261b(b)(2)) is amended by striking ''prescribed pursuant to section 3(a) of the Small Business Act (15 U.S.C. 632(a))'' and inserting ''prescribed for a small business concern under section 10101 of title 53, United States Code''.

(12) Section 507(c)(1)(B) of the Clean Air Act (42 U.S.C. 7661f(c)(1)(B)) is amended by striking ''the Small Business Act'' and inserting ''section 10101 of title 53, United States Code''.

(13) Section 107(p)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9607(p)(1)) is amended—

(A) in subparagraph (B), by striking ''(within the meaning of the Small Business Act (15 U.S.C. 631 et seq.))'' and inserting ''(as defined in section 10101 of title 53, United States Code)''; and

(B) in the matter following subparagraph (C), by striking ''the Small Business Act (15 U.S.C. 631 et seq.)'' and inserting ''subtitles I and II of title 53, United States Code''.

(14) Section 626(a) of the Community Economic Development Act of 1981 (42 U.S.C. 9815(a)) is amended—

(A) by striking paragraph (1) and inserting ''(1) Funds that are invested directly or indirectly in a small business investment company (as defined in section 30301 of title 53, United States Code) shall be included as—

''(A) private capital for purposes of the definition of that term in section 30301 of title 53, United States Code; and

''(B) paid-in capital for purposes of section 33103(c)(1) of title 53, United States Code.''; and

(B) in paragraph (2), by striking ''section 8(a) of the Small Business Act'' and inserting ''chapters 231 to 235 of title 53, United States Code''.

(15) Section 3(4) of the Renewable Energy and Energy Efficiency Technology Competitiveness Act of 1989 (42 U.S.C. 12002(4)) is amended by striking ''under section 3(a) of the Small Business Act'' and inserting ''for a small business concern under section 10101 of title 53, United States Code,''.

(16) Section 3021(b) of the Energy Policy Act of 1992 (42 U.S.C. 13556(b)) is amended—

(A) in paragraph (1), by striking ''such term has under section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''given the term in section 10101 of title 53, United States Code'';

(B) in paragraph (2), by striking ''such term has under section 8(d) of the Small Business Act (15 U.S.C. 637(d))'' and inserting ''that that term has under the contract clause described in section 24301(c) of title 52, United States Code,''; and

(C) in paragraph (3), by striking ''section 3(p) of the Small Business Act (15 U.S.C. 632(o))'' and inserting ''section 10101 of title 53, United States Code''.

(17) Section 2(5) of the Energy Policy Act of 2005 (42 U.S.C. 15801(2)) is amended by striking ''section 3 of the Small Business Act (15 U.S.C. 632)'' and inserting ''section 10101 of title 53, United States Code''.

(18) Section 988(f)(3) of the Energy Policy Act of 2005 (42 U.S.C. 16352(f)(3)) is amended—

(A) in subparagraph (A), by striking ''section 9 of the Small Business Act (15 U.S.C. 638)'' and inserting ''division H of subtitle II of title 53, United States Code''; and

(B) in subparagraph (B), by striking ''that section'' and inserting ''that division''.

(19) Section 1003(a)(1) of the Energy Policy Act of 2005 (42 U.S.C. 16393(a)(1)) is amended by striking ''socially and economically disadvantaged small business concerns (as defined in section 8(a)(4) of the Small Business Act (15 U.S.C. 63y(a)(4)))'' and inserting ''small business concerns owned and operated by socially and economically disadvantaged individuals (as defined in section 10101 of title 53, United States Code)''.

(q) TITLE 43.—Section 29(e)(4)(C) of the Alaska Native Claims Settlement Act (43 U.S.C. 1626(e)(4)(C)) is amended by striking ''section 8 of Public Law 85–536'' and inserting ''chapters 231 to 235 of title 53, United States Code,''.

(r) TITLE 50.—Section 702 of the Defense Production Act of 1950 (50 App. U.S.C. 2152) is amended—

(1) in paragraph (17), by striking ''section 3(a) of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code,''; and

(2) in paragraph (18), by striking ''section 8(d)(3)(C) of the Small Business Act'' and inserting ''section 10101 of title 53, United States Code''.

SEC. 6. TRANSITIONAL AND SAVINGS PROVISIONS.

(a) DEFINITIONS.—In this section:

(1) SOURCE PROVISION.—The term ''source provision'' means a provision of law that is replaced by a title 53 provision.

(2) TITLE 53 PROVISION.—The term ''title 53 provision'' means a provision of title 53, United States Code, that is enacted by section 3.

(b) CUTOFF DATE.—The title 53 provisions replace certain provisions of law enacted on or before February 4, 2009. If a law enacted after that date amends or repeals a source provision, that law is deemed to amend or repeal, as the case may be, the corresponding title 53 provision. If a law enacted after that date is otherwise inconsistent with a title 53 provision or a provision of this Act, that law supersedes the title 53 provision or provision of this Act to the extent of the inconsistency.

(c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—For purposes of determining whether one provision of law supersedes another based on enactment later in time, a title 53 provision is deemed to have been enacted on the date of enactment of the source provision that the title 53 provision replaces.

(d) REFERENCES TO TITLE 53 PROVISIONS.—A reference to a title 53 provision is deemed to refer to the corresponding source provision.

(e) REFERENCES TO SOURCE PROVISIONS.—A reference to a source provision, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding title 53 provision.

(f) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a source provision continues in effect under the corresponding title 53 provision.

(g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a source provision is deemed to have been taken or committed under the corresponding title 53 provision.

SEC. 7. REPEALS.

The following provisions of law are repealed, except with respect to rights and duties that matured, penalties that were incurred, or proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Act	Section	United States Code Former Classification
Small Business Act (Public Law 85–536, § 2)	2(d)(1), (g), (i), (j)	15 U.S.C. 631(d)(1), (g), (i), (j).
	3	15 U.S.C. 632.
	4	15 U.S.C. 633.
	5	15 U.S.C. 634.
	6	15 U.S.C. 635.
	7	15 U.S.C. 636.
	8	15 U.S.C. 637.
	9	15 U.S.C. 638.
	10	15 U.S.C. 639.
	11	15 U.S.C. 640.
	12	15 U.S.C. 641.
	13	15 U.S.C. 642.
	14	15 U.S.C. 643.
	15	15 U.S.C. 644.
	16	15 U.S.C. 645.
	17	15 U.S.C. 646.
	18	15 U.S.C. 647.
	19	15 U.S.C. 631.
	20(a)(1), (2), (4), (b) to (e), (j).	15 U.S.C. 631 note.
	21	15 U.S.C. 648.
	22	15 U.S.C. 649.
	23	15 U.S.C. 650.
	24	15 U.S.C. 651.
	25	15 U.S.C. 652.
	26	15 U.S.C. 653.
	27	15 U.S.C. 654.
	28	15 U.S.C. 655.
	29	15 U.S.C. 656.
	30	15 U.S.C. 657.
	31	15 U.S.C. 657a.
	32	15 U.S.C. 657b.
	33	15 U.S.C. 657c.
	34	15 U.S.C. 657d.
	35	15 U.S.C. 657e.
	36	15 U.S.C. 657f.
	37	15 U.S.C. 657i.
	38	15 U.S.C. 657j.
	39	15 U.S.C. 657k.
	40	15 U.S.C. 657*l*.
	41	15 U.S.C. 657m.
	42	15 U.S.C. 657n.
	43	15 U.S.C. 657*o*.
	44	15 U.S.C. 631 note.
Small Business Investment Act of 1958 (Public Law 85–699)	101	15 U.S.C. 631 note.
	102	15 U.S.C. 661.
	103	15 U.S.C. 662.
	201	15 U.S.C. 671.
	301	15 U.S.C. 681.
	302	15 U.S.C. 682.
	303	15 U.S.C. 683.
	304	15 U.S.C. 684.
	305	15 U.S.C. 685.
	306	15 U.S.C. 686.
	308	15 U.S.C. 687.
	309	15 U.S.C. 687a.
	310	15 U.S.C. 687b.
	311	15 U.S.C. 687c.
	312	15 U.S.C. 687d.
	313	15 U.S.C. 687e.
	314	15 U.S.C. 687f.
	315	15 U.S.C. 687g.
	316	15 U.S.C. 687h.
	318	15 U.S.C. 687k.
	319	15 U.S.C. 687*l*.
	320	15 U.S.C. 687m.
	351	15 U.S.C. 689.
	352	15 U.S.C. 689a.
	353	15 U.S.C. 689b.
	354	15 U.S.C. 689c.
	355	15 U.S.C. 689d.
	356	15 U.S.C. 689e.
	357	15 U.S.C. 689f.
	358	15 U.S.C. 689g.
	359	15 U.S.C. 689h.
	360	15 U.S.C. 689i.
	361	15 U.S.C. 689j.
	362	15 U.S.C. 689k.
	363	15 U.S.C. 689*l*.
	364	15 U.S.C. 689m.

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Act	Section	United States Code Former Classification
	365	15 U.S.C. 689n.
	366	15 U.S.C. 689*o*.
	367	15 U.S.C. 689p.
	368	15 U.S.C. 689q.
	381	15 U.S.C. 690.
	382	15 U.S.C. 690a.
	383	15 U.S.C. 689b.
	384	15 U.S.C. 690c.
	385	15 U.S.C. 690d.
	386	15 U.S.C. 690e.
	387	15 U.S.C. 690f.
	388	15 U.S.C. 690g.
	389	15 U.S.C. 690h.
	390	15 U.S.C. 690i.
	391	15 U.S.C. 690j.
	392	15 U.S.C. 690k.
	393	15 U.S.C. 690*l*.
	394	15 U.S.C. 690m.
	395	15 U.S.C. 690n.
	396	15 U.S.C. 690*o*.
	397	15 U.S.C. 690p.
	398	15 U.S.C. 690q.
	401	15 U.S.C. 692.
	402	15 U.S.C. 693.
	404	15 U.S.C. 694–1.
	405	15 U.S.C. 694–2.
	410	15 U.S.C. 694a.
	411	15 U.S.C. 694b.
	412	15 U.S.C. 694c.
	501	15 U.S.C. 695.
	502	15 U.S.C. 696.
	503	15 U.S.C. 697.
	504	15 U.S.C. 697a.
	505	15 U.S.C. 697b.
	506	15 U.S.C. 697c.
	507	15 U.S.C. 697d.
	508	15 U.S.C. 697e.
	509	15 U.S.C. 697f.
	510	15 U.S.C. 697g.
Public Law 91–151	301	15 U.S.C. 633 note.
Disaster Relief Act of 1970 (Public Law 91–606)	234	15 U.S.C. 636b (first sentence).
Public Law 93–24	9	15 U.S.C. 636 note.
Public Law 94–305	201	15 U.S.C. 634a.
	202	15 U.S.C. 634b.
	203	15 U.S.C. 634c.
	204	15 U.S.C. 634d.
	205	15 U.S.C. 634e.
	206	15 U.S.C. 634f.
	207	15 U.S.C. 634g.
Public Law 95–507	223	15 U.S.C. 637b.
	224(a)	15 U.S.C. 637c.
Small Business Economic Policy Act of 1980 (Public Law 96–302)	302	15 U.S.C. 631a.
	303	15 U.S.C. 632b.
Public Law 96–481	301	15 U.S.C. 649a.
	302	15 U.S.C. 649b.
	303	15 U.S.C. 649c.
	304	15 U.S.C. 649d.
Small Business and Federal Procurement Competition Enhancement Act of 1984 (Public Law 98–577)	403(b)	15 U.S.C. 644 note.
	404(c)	15 U.S.C. 637 note.
Public Law 99–500	101(a) [title VI, § 630], 100 Stat. 1783, 1783–30.	15 U.S.C. 638 note.

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Act	Section	United States Code Former Classification
Public Law 99–591	101(a) [title VI, § 630], 100 Stat. 3341, 3341–30.	15 U.S.C. 638 note.
Public Law 100–71	title I, chapter I, proviso in the matter under the heading "SALARIES AND EXPENSES" under the heading "SMALL BUSINESS ADMINISTRATION" under the heading "RELATED AGENCIES" (101 Stat. 396).	15 U.S.C. 633 note.
Women's Business Ownership Act of 1988 (Public Law 100–533)	401	15 U.S.C. 7101.
	402	15 U.S.C. 7102.
	403	15 U.S.C. 7103.
	404	15 U.S.C. 7104.
	405	15 U.S.C. 7105.
	406	15 U.S.C. 7106.
	407	15 U.S.C. 7107.
	408	15 U.S.C. 7108.
	409	15 U.S.C. 7109.
	410	15 U.S.C. 7110.
Small Business Administration Reauthorization and Amendment Act of 1988 (Public Law 100–590)	133(c)	15 U.S.C. 644 note.
	132	15 U.S.C. 637 note.
Business Opportunity Development Reform Act of 1988 (Public Law 100–656)	2	15 U.S.C. 636 note.
	303(f)	15 U.S.C. 637 note.
	304(b)	15 U.S.C. 636 note.
	401(b)	15 U.S.C. 633 note.
	410	15 U.S.C. 636 note.
	602(a)	15 U.S.C. 637 note.
	711	15 U.S.C. 644 note.
	712	15 U.S.C. 644 note.
	713	15 U.S.C. 644 note.
	714	15 U.S.C. 644 note.
	715	15 U.S.C. 644 note.
	717	15 U.S.C. 644 note.
	718	15 U.S.C. 644 note.
	741	15 U.S.C. 644 note.
	711	15 U.S.C. 644 note.
Public Law 101–189	834	15 U.S.C. 631c.
Small Business Administration Reauthorization and Amendments Act of 1990 (Public Law 101–574)	203	15 U.S.C. 637 note.
	311	15 U.S.C. 653 note.
Women's Business Development Act of 1991 (Public Law 102–191)	3 (second sentence)	15 U.S.C. 637 note.
Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102–366)	202(h)	15 U.S.C. 644 note.
	221	15 U.S.C. 636 note.
	226	15 U.S.C. 634 note.
Public Law 102–484	4237	15 U.S.C. 638 note.
Small Business Research and Development Enhancement Act of 1992 (Public Law 102–564)	306	15 U.S.C. 638 note.
Small Business Guaranteed Credit Enhancement Act of 1993 (Public Law 103–81)	6	15 U.S.C. 634 note.

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Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103–325)	172	15 U.S.C. 6901.
	173	15 U.S.C. 6902.
	174	15 U.S.C. 6903.
	175	15 U.S.C. 6904.
	176	15 U.S.C. 6905.
	177	15 U.S.C. 6906.
	178	15 U.S.C. 6907.
	179	15 U.S.C. 6908.
	180	15 U.S.C. 6909.
	181	15 U.S.C. 6910.
Federal Acquisition Streamlining Act of 1994 (Public Law 103–355)	2353	15 U.S.C. 644 note.
	7102	15 U.S.C. 644 note.
	7104	15 U.S.C. 644 note.
Small Business Administration Reauthorization and Amendments Act of 1994 (Public Law 103–403)	212(c)	15 U.S.C. 697d note.
Small Business Programs Improvement Act of 1996 (Public Law 104–208)	div. D, title I, § 103(h)	15 U.S.C. 634 note.
Public Law 105–85	850(e)(3)	15 U.S.C. 637 note.
Small Business Reauthorization Act of 1997 (Public Law 105–135)	202(b)	15 U.S.C. 636 note.
	416(b)	15 U.S.C. 637 note.
	501(b)(2)	15 U.S.C. 636 note.
	505	15 U.S.C. 634 note.
	507	15 U.S.C. 636 note.
	509	15 U.S.C. 636 note.
	704	15 U.S.C. 631 note.
	707	15 U.S.C. 631 note.
	709	15 U.S.C. 631 note.
Veterans Entrepreneurship and Small Business Development Act of 1999 (Public Law 106–50)	203	15 U.S.C. 657b note.
	301	15 U.S.C. 657b note.
	302	15 U.S.C. 657b note.
	603	15 U.S.C. 657b note.
	604	15 U.S.C. 657b note.
Small Business Investment Company Amendments Act of 2001 (Public Law 107–100)	6(d)	15 U.S.C. 697 note.
Public Law 108–447	div. K, title I, § 147	15 U.S.C. 631e.
	div. K, title I, § 152(a)(2)	15 U.S.C. 632 note.
	div. K, title I, § 155	15 U.S.C. 657g.
Public Law 109–59	10201	15 U.S.C. 657g note.
Public Law 109–289	div. A, title VIII, § 8018 (last proviso).	15 U.S.C. 637 note.
Public Law 110–140	1203	15 U.S.C. 657h.
Military Reservist and Veteran Small Business Reauthorization and Opportunity Act of 2008 (Public Law 110–186)	3	15 U.S.C. 636 note.
	105	15 U.S.C. 637 note.
	201(b), (c)	15 U.S.C. 636 note.
	202	15 U.S.C. 636 note.
Small Business Disaster Response and Loan Improvements Act of 2008 (Public Law 110–246)	12052	15 U.S.C. 636e.

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	12063(b)	15 U.S.C. 636 note.
	12066(b)	15 U.S.C. 636f.
	12072	15 U.S.C. 636g.
	12073	15 U.S.C. 636h.
	12079	15 U.S.C. 636i.
	12085	15 U.S.C. 636j.
	12091	15 U.S.C. 636k.
Public Law 111–3	621	15 U.S.C. 657p.