

Public Law 108–217
108th Congress
An Act

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through June 4, 2004, and for other purposes.

Apr. 5, 2004
[H.R. 4062]

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

SECTION 1. ADDITIONAL TEMPORARY EXTENSION OF AUTHORIZATION OF PROGRAMS UNDER SMALL BUSINESS ACT AND SMALL BUSINESS INVESTMENT ACT OF 1958.

The authorization for any program, authority, or provision, including any pilot program, that was extended through April 2, 2004, by section 1 of Public Law 108–205 is further extended through June 4, 2004, under the same terms and conditions.

Ante, p. 553.

SEC. 2. EXTENSION OF CERTAIN FEE AUTHORIZATIONS.

Section 503(f) of the Small Business Investment Act of 1958 (15 U.S.C. 697(f)), as amended by section 2 of Public Law 108–205, is further amended by striking “May 21, 2004” and inserting “October 1, 2004”.

SEC. 3. FISCAL YEAR 2004 PURCHASE AND GUARANTEE AUTHORITY UNDER TITLE III OF SMALL BUSINESS INVESTMENT ACT OF 1958.

Section 20 of the Small Business Act (15 U.S.C. 631 note) is amended by adding at the end the following new subsection:

“(j) FISCAL YEAR 2004 PURCHASE AND GUARANTEE AUTHORITY UNDER TITLE III OF SMALL BUSINESS INVESTMENT ACT OF 1958.—For fiscal year 2004, for the programs authorized by title III of the Small Business Investment Act of 1958 (15 U.S.C. 681 et seq.), the Administration is authorized to make—

- “(1) \$4,000,000,000 in purchases of participating securities; and
“(2) \$3,000,000,000 in guarantees of debentures.”.

SEC. 4. COMBINATION FINANCING.

15 USC 636 note.

Applicability.

(a) IN GENERAL.—During the period beginning on the date of the enactment of this section and ending on September 30, 2004, subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(a)) shall be applied as if the paragraph set forth in subsection (b) were added at the end of that subsection (a).

(b) PARAGRAPH SPECIFIED.—The paragraph referred to in subsection (a) is as follows:

- “(31) COMBINATION FINANCING.—
“(A) DEFINITIONS.—In this paragraph—

“(i) the term ‘combination financing’ means financing comprised of a loan guaranteed under this subsection and a commercial loan; and

“(ii) the term ‘commercial loan’ means a loan which is part of a combination financing and no portion of which is guaranteed by the Federal Government.

“(B) APPLICABILITY.—This paragraph applies to a loan guarantee obtained by a small business concern under this subsection, if the small business concern also obtains a commercial loan.

“(C) COMMERCIAL LOAN AMOUNT.—In the case of any combination financing, the amount of the commercial loan which is part of such financing shall not exceed the gross amount of the loan guaranteed under this subsection which is part of such financing.

“(D) COMMERCIAL LOAN PROVISIONS.—The commercial loan obtained by the small business concern—

“(i) may be made by the participating lender that is providing financing under this subsection or by a different lender;

“(ii) may be secured by a senior lien; and

“(iii) may be made by a lender in the Preferred Lenders Program, if applicable.

“(E) COMMERCIAL LOAN FEE.—A one-time fee in an amount equal to 0.7 percent of the amount of the commercial loan shall be paid by the lender to the Administration if the commercial loan has a senior credit position to that of the loan guaranteed under this subsection. Paragraph (23)(B) shall apply to the fee established by this paragraph.

“(F) DEFERRED PARTICIPATION LOAN SECURITY.—A loan guaranteed under this subsection may be secured by a subordinated lien.

“(G) COMPLETION OF APPLICATION PROCESSING.—The Administrator shall complete processing of an application for combination financing under this paragraph pursuant to the program authorized by this subsection as it was operating on October 1, 2003.

“(H) BUSINESS LOAN ELIGIBILITY.—Any standards prescribed by the Administrator relating to the eligibility of small business concerns to obtain combination financing under this subsection which are in effect on the date of the enactment of this paragraph shall apply with respect to combination financings made under this paragraph. Any modifications to such standards by the Administrator after such date shall not unreasonably restrict the availability of combination financing under this paragraph relative to the availability of such financing before such modifications.”.

Applicability.

15 USC 636 note.

SEC. 5. LOAN GUARANTEE FEES.

Applicability.

(a) IN GENERAL.—During the period beginning on the date of the enactment of this section and ending on September 30, 2004, subparagraph (A) of paragraph (23) of subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(a)(23)(A)) shall be applied as if that subparagraph consisted of the language set forth in subsection (b).

(b) LANGUAGE SPECIFIED.—The language referred to in subsection (a) is as follows:

“(A) PERCENTAGE.—

“(i) IN GENERAL.—With respect to each loan guaranteed under this subsection, the Administrator shall, in accordance with such terms and procedures as the Administrator shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan.

“(ii) TEMPORARY PERCENTAGE.—With respect to loans approved during the period beginning on the date of enactment of this clause and ending on September 30, 2004, the annual fee assessed and collected under clause (i) shall be equal to 0.36 percent of the outstanding balance of the deferred participation share of the loan.”.

(c) RETENTION OF CERTAIN FEES.—Subparagraph (B) of paragraph (18) of subsection (a) of section 7 of the Small Business Act (15 U.S.C. 636(a)(18)(B)) shall not be effective during the period beginning on the date of the enactment of this section and ending on September 30, 2004.

SEC. 6. EXPRESS LOAN PROVISIONS.

15 USC 636 note.

(a) DEFINITIONS.—For the purposes of this section:

(1) The term “express lender” shall mean any lender authorized by the Administrator to participate in the Express Loan Pilot Program.

(2) The term “Express Loan” shall mean any loan made pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636(a)) in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(3) The term “Express Loan Pilot Program” shall mean the program established by the Administrator prior to the date of enactment of this section under the authority granted in section 7(a)(25)(B) of the Small Business Act (15 U.S.C. 636(a)(25)(B)) with a guaranty rate not to exceed 50 percent.

(4) The term “Administrator” means the Administrator of the Small Business Administration.

(5) The term “small business concern” has the same meaning given such term under section 3(a) of the Small Business Act (15 U.S.C. 632(a)).

(b) RESTRICTION TO EXPRESS LENDER.—The authority to make an Express Loan shall be limited to those lenders deemed qualified to make such loans by the Administrator. Designation as an express lender for purposes of making an Express Loan shall not prohibit such lender from taking any other action authorized by the Administrator for that lender pursuant to section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(c) GRANDFATHERING OF EXISTING LENDERS.—Any express lender shall retain such designation unless the Administrator determines that the express lender has violated the law or regulations promulgated by the Administrator or modifies the requirements to be an express lender and the lender no longer satisfies those requirements.

(d) TEMPORARY EXPANSION OF EXPRESS LOAN PILOT PROGRAM.—

(1) AUTHORIZATION.—As of the date of enactment of this section, the maximum loan amount in the Express Loan Pilot Program shall be increased to a maximum loan amount of \$2,000,000 as set forth in section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)).

(2) TERMINATION DATE.—The authority set forth in paragraph (1) shall terminate on September 30, 2004.

(3) SAVINGS PROVISION.—Nothing in this section shall be interpreted to modify or alter the authority of the Administrator to continue to operate the Express Loan Pilot Program on or after October 1, 2004.

(e) OPTION TO PARTICIPATE.—Except as otherwise provided in this section, the Administrator shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to section 7(a)(24) of the Small Business Act (15 U.S.C. 636(a)(24)), that has the effect of—

(1) requiring a lender to make an Express Loan pursuant to subsection (d);

(2) limiting or modifying any term or condition of deferred participation loans made under such section (other than Express Loans) unless the Administrator imposes the same limit or modification on Express Loans;

(3) transferring or re-allocating staff, staff responsibilities, resources, or funding, if the result of such transfer or re-allocation would be to increase the average loan processing, approval, or disbursement time above the averages for those functions as of October 1, 2003, for loan guarantees approved under such section by employees of the Administration or through the Preferred Lenders Program; or

(4) otherwise providing any incentive or disincentive which encourages lenders or borrowers to make or obtain loans under the Express Loan Pilot Program instead of under the general loan authority of section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

(f) COLLECTION AND REPORTING OF DATA.—For all loans in excess of \$250,000 made pursuant to the authority set forth in subsection (d)(1), the Administrator shall, to the extent practicable, collect data on the purpose for each such loan. The Administrator shall report monthly to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives on the number of such loans and their purposes.

(g) TERMINATION.—Subsections (b), (c), (e), and (f) shall not apply after September 30, 2004.

15 USC 636 note.

SEC. 7. FISCAL YEAR 2004 DEFERRED PARTICIPATION STANDARDS.

Deferred participation loans made during the period beginning on the date of the enactment of this Act and ending on September 30, 2004, under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) shall have the same terms and conditions (including maximum gross loan amounts and collateral requirements) as were applicable to loans made under such section on October 1, 2003, except as otherwise provided in this Act. This section shall not preclude the Administrator of the Small Business Administration from taking such action as necessary to maintain the loan program carried out under such section, subject to appropriations.

15 USC 636 note.

SEC. 8. TEMPORARY INCREASE IN LOAN LIMIT UNDER BUSINESS LOAN AND INVESTMENT FUND AND IN ASSOCIATED GUARANTEE FEES.

Applicability.

(a) TEMPORARY INCREASE IN AMOUNT PERMITTED TO BE OUTSTANDING AND COMMITTED.—During the period beginning on the date of the enactment of this Act and ending on September 30,

2004, section 7(a)(3)(A) of the Small Business Act (15 U.S.C. 636(a)(3)(A)) shall be applied as if the first dollar figure were \$1,500,000.

(b) TEMPORARY GUARANTEE FEE ON DEFERRED PARTICIPATION SHARE OVER \$1,000,000.—With respect to loans made during the period referred to in subsection (a) to which section 7(a)(18) of the Small Business Act (15 U.S.C. 636(a)(18)) applies, the Administrator of the Small Business Administration shall collect an additional guarantee fee equal to 0.25 percent of the amount (if any) by which the deferred participation share of the loan exceeds \$1,000,000.

Approved April 5, 2004.

LEGISLATIVE HISTORY—H.R. 4062:

CONGRESSIONAL RECORD, Vol. 150 (2004):
Mar. 31, considered and passed House.
Apr. 1, considered and passed Senate.