

(b) Utilization of existing agencies, private individuals, etc., in furnishing assistance; grants to intermediary organizations

(1) The Secretary shall furnish technical assistance under this part through existing agencies and through private individuals, firms, or institutions (including private consulting services), or by grants to intermediary organizations (including Trade Adjustment Assistance Centers).

(2) In the case of assistance furnished through private individuals, firms, or institutions (including private consulting services), the Secretary may share the cost thereof (but not more than 75 percent of such cost for assistance described in paragraph (2) or (3) of subsection (a) of this section may be borne by the United States).

(3) The Secretary may make grants to intermediary organizations in order to defray up to 100 percent of administrative expenses incurred in providing such technical assistance to a firm.

(Pub. L. 93-618, title II, §253, Jan. 3, 1975, 88 Stat. 2031; Pub. L. 97-35, title XXV, §2521, Aug. 13, 1981, 95 Stat. 890; Pub. L. 99-272, title XIII, §13006(a)(3), Apr. 7, 1986, 100 Stat. 304.)

AMENDMENTS

1986—Subsec. (b)(2). Pub. L. 99-272 substituted “such cost for assistance described in paragraph (2) or (3) of subsection (a) of this section” for “such cost”.

1981—Subsec. (a). Pub. L. 97-35 amended subsec. (a) generally, incorporating provisions formerly contained in subsec. (b) and, in those provisions, substituted discretionary language for non-discretionary language relating to the assistance furnished and allowed the giving of assistance to firms in the preparation of their petitions for certification of eligibility under section 2341 of this title.

Subsec. (b). Pub. L. 97-35 amended subsec. (b) generally, incorporating in pars. (1) and (2) provisions formerly contained in subsec. (c), inserted reference to grants to intermediary organizations (including Trade Adjustment Assistance Centers) in par. (1), and added par. (3). Provisions formerly contained in subsec. (b) were transferred to subsec. (a).

Subsec. (c). Pub. L. 97-35 struck out subsec. (c) and transferred the provisions to subsec. (b)(1) and (2).

EFFECTIVE DATE OF 1981 AMENDMENT

Section 2529 of Pub. L. 97-35 provided that:

“(a) Subject to subsection (b), the amendments made by this subtitle [subtitle B (§§2521-2529) of title XXV of Pub. L. 97-35, enacting section 2355 of this title, amending this section and sections 2344 to 2347 of this title, and repealing section 2353 of this title] shall take effect on the date of the enactment of this Act [Aug. 13, 1981].

“(b) Applications for adjustment assistance under chapter 3 of title II of the Trade Act of 1974 [this part] which the Secretary of Commerce accepted for processing before the date of the enactment of this Act [Aug. 13, 1981] shall continue to be processed in accordance with the requirements of such chapter as in effect before such date of enactment.”

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93-618, as amended, set out as a note preceding section 2271 of this title.

§ 2344. Financial assistance

(a) Direct loans and guarantees of loans

The Secretary may provide to a firm, on such terms and conditions as he determines to be ap-

propriate, such financial assistance in the form of direct loans or guarantees of loans as in his judgment will materially contribute to the economic adjustment of the firm. The assumption of an outstanding indebtedness of the firm, with or without recourse, shall be considered to be the making of a loan for purposes of this section.

(b) Allowable purposes

Loans or guarantees of loans shall be made under this part only for the purpose of making funds available to the firm—

(1) for acquisition, construction, installation, modernization, development, conversion, or expansion of land, plant, buildings, equipment, facilities, or machinery, or

(2) to supply such working capital as may be necessary to enable the firm to implement its adjustment proposal.

(c) Limitation on direct loans

No direct loan may be provided to a firm under this part if the firm can obtain loan funds from private sources (with or without a guarantee) at a rate no higher than the maximum interest per annum that a participating financial institution may establish on guaranteed loans made pursuant to section 636(a) of title 15.

(d) Limitations on loans and guarantees

Notwithstanding any other provision of this part, no direct loans or guarantees of loans may be made under this part after April 7, 1986.

(Pub. L. 93-618, title II, §254, Jan. 3, 1975, 88 Stat. 2031; Pub. L. 97-35, title XXV, §2522, Aug. 13, 1981, 95 Stat. 891; Pub. L. 99-272, title XIII, §13006(b), Apr. 7, 1986, 100 Stat. 304.)

AMENDMENTS

1986—Subsec. (d). Pub. L. 99-272 added subsec. (d).

1981—Subsec. (c). Pub. L. 97-35 substituted provisions relating to limitation on direct loans on the basis of interest rates on loans under section 636(a) of title 15 for provisions relating to limitation on direct loans on the basis of interest rates under section 2345(b) of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97-35, set out as a note under section 2343 of this title.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93-618, as amended, set out as a note preceding section 2271 of this title.

§ 2345. Conditions for financial assistance

(a) Unavailability of firm's resources; reasonable assurance of repayment

No financial assistance shall be provided under this part unless the Secretary determines—

(1) that the funds required are not available from the firm's own resources; and

(2) that there is reasonable assurance of repayment of the loan.

(b) Interest rates

(1) The rate of interest on direct loans made under this part shall be—

(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 of maturity that are comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 percent, plus

(B) an amount adequate in the judgment of the Secretary of Commerce to cover administrative costs and probable losses under the program.

(2) The Secretary may not guarantee any loan under this part if—

(A) the rate of interest on either the portion to be guaranteed, or the portion not to be guaranteed, is determined by the Secretary to be excessive when compared with other loans bearing Federal guarantees and subject to similar terms and conditions, and

(B) the interest on the loan is exempt from Federal income taxation under section 103 of title 26.

(c) Maturity of loans

The Secretary shall make no loan or guarantee of a loan under section 2344(b)(1) of this title having a maturity in excess of 25 years or the useful life of the fixed assets (whichever period is shorter), including renewals and extensions; and shall make no loan or guarantee of a loan under section 2344(b)(2) of this title having a maturity in excess of 10 years, including extensions and renewals. Such limitations on maturities shall not, however, apply—

(1) to securities or obligations received by the Secretary as claimant in bankruptcy or equitable reorganization, or as creditor in other proceedings attendant upon insolvency of the obligor, or

(2) to an extension or renewal for an additional period not exceeding 10 years, if the Secretary determines that such extension or renewal is reasonably necessary for the orderly liquidation or servicing of the loan.

(d) Priority for small firms; servicing of loans

(1) In making guarantees of loans, and in making direct loans, the Secretary shall give priority to firms which are small within the meaning of the Small Business Act [15 U.S.C. 631 et seq.] (and regulations promulgated thereunder).

(2) For any direct loan made, or any loan guaranteed, under the authority of this part, the Secretary may enter into arrangements for the servicing, including foreclosure, of such loans or evidences of indebtedness on terms which are reasonable and which protect the financial interests of the United States.

(e) Loan guarantee conditions

The following conditions apply with respect to any loan guaranteed under this part:

(1) No guarantee may be made for an amount which exceeds 90 percent of the outstanding balance of the unpaid principal and interest on the loan.

(2) The loan may be evidenced by multiple obligations for the guaranteed and nonguaranteed portions of the loan.

(3) The guarantee agreement shall be conclusive evidence of the eligibility of any obliga-

tion guaranteed thereunder for such guarantee, and the validity of any guarantee agreement shall be incontestable, except for fraud or misrepresentation by the holder.

(f) Operating reserves

The Secretary shall maintain operating reserves with respect to anticipated claims under guarantees made under this part. Such reserves shall be considered to constitute obligations for purposes of sections 1108(c) and (d), 1501, and 1502(a) of title 31.

(g) Fees to lenders which make loan guarantees

The Secretary may charge a fee to a lender which makes a loan guaranteed under this part in such amount as is necessary to cover the cost of administration of such guarantee.

(h) Maximum aggregate amount of outstanding guaranteed or direct loans

(1) The aggregate amount of loans made to any firm which are guaranteed under this part and which are outstanding at any time shall not exceed \$3,000,000.

(2) The aggregate amount of direct loans made to any firm under this part which are outstanding at any time shall not exceed \$1,000,000.

(i) Preference for firms having employee stock ownership plans

(1) When considering whether to grant a direct loan or to guarantee a loan to a corporation which is otherwise certified under section 2341 of this title, the Secretary shall give preference to a corporation which agrees with respect to such loan to fulfill the following requirements—

(A) 25 percent of the principal amount of the loan is paid by the lender to a qualified trust established under an employee stock ownership plan established and maintained by the recipient corporation, by a parent or subsidiary of such corporation, or by several corporations including the recipient corporation,

(B) the employee stock ownership plan meets the requirements of this subsection, and

(C) the agreement among the recipient corporation, the lender, and the qualified trust relating to the loan meets the requirements of this section.

(2) An employee stock ownership plan does not meet the requirements of this subsection unless the governing instrument of the plan provides that—

(A) the amount of the loan paid under paragraph (1)(A) to the qualified trust will be used to purchase qualified employer securities,

(B) the qualified trust will repay to the lender the amount of such loan, together with the interest thereon, out of amounts contributed to the trust by the recipient corporation, and

(C) from time to time, as the qualified trust repays such amount, the trust will allocate qualified employer securities among the individual accounts of participants and their beneficiaries in accordance with the provisions of paragraph (4).

(3) The agreement among the recipient corporation, the lender, and the qualified trust does not meet the requirements of this subsection unless—

(A) it is unconditionally enforceable by any party against the others, jointly and severally,

(B) it provides that the liability of the qualified trust to repay loan amounts paid to the qualified trust may not, at any time, exceed an amount equal to the amount of contributions required under paragraph (2)(B) which are actually received by such trust,

(C) it provides that amounts received by the recipient corporation from the qualified trust for qualified employer securities purchased for the purpose of this subsection will be used exclusively by the recipient corporation for those purposes for which it may use that portion of the loan paid directly to it by the lender,

(D) it provides that the recipient corporation may not reduce the amount of its equity capital during the one year period beginning on the date on which the qualified trust purchases qualified employer securities for purposes of this subsection, and

(E) it provides that the recipient corporation will make contributions to the qualified trust of not less than such amounts as are necessary for such trust to meet its obligation to make repayments of principal and interest on the amount of the loan received by the trust without regard to whether such contributions are deductible by the corporation under section 404 of title 26 and without regard to any other amounts the recipient corporation is obligated under law to contribute to or under the employee stock ownership plan.

(4) At the close of each plan year, an employee stock ownership plan shall allocate to the accounts of participating employees that portion of the qualified employer securities the cost of which bears substantially the same ratio to the cost of all the qualified employer securities purchased under paragraph (2)(A) of this subsection as the amount of the loan principal and interest repaid by the qualified trust during that year bears to the total amount of the loan principal and interest payable by such trust during the term of such loan. Qualified employer securities allocated to the individual account of a participant during one plan year must bear substantially the same proportion to the amount of all such securities allocated to all participants in the plan as the amount of compensation paid to such participant bears to the total amount of compensation paid to all such participants during that year.

(5) For purposes of this subsection, the term—

(A) “employee stock ownership plan” means a plan described in section 4975(e)(7) of title 26,

(B) “qualified trust” means a trust established under an employee stock ownership plan and meeting the requirements of title I of the Employee Retirement Income Security Act of 1974 [29 U.S.C. 1001 et seq.] and section 401 of title 26,

(C) “qualified employer securities” means common stock issued by the recipient corporation or by a parent or subsidiary of such corporation with voting power and dividend rights no less favorable than the voting power and dividend rights on other common stock issued by the issuing corporation and with voting power being exercised by the participants

in the employee stock ownership plan after it is allocated to their plan accounts, and

(D) “equity capital” means, with respect to the recipient corporation, the sum of its money and other property (in an amount equal to the adjusted basis of such property but disregarding adjustments made on account of depreciation or amortization made during the period described in paragraph (3)(D)), less the amount of its indebtedness.

(Pub. L. 93-618, title II, § 255, Jan. 3, 1975, 88 Stat. 2031; Pub. L. 97-35, title XXV, § 2523, Aug. 13, 1981, 95 Stat. 891; Pub. L. 98-120, § 4(a), Oct. 12, 1983, 97 Stat. 809; Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (d)(1), is Pub. L. 85-536, § 2 (1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Employee Retirement Income Security Act of 1974, referred to in subsec. (i)(5)(B), is Pub. L. 93-406, Sept. 2, 1974, 88 Stat. 829, as amended. Title I of the Employee Retirement Income Security Act of 1974 is classified generally to subchapter I (§ 1001 et seq.) of chapter 18 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 29 and Tables.

CODIFICATION

In subsec. (f), “sections 1108(c) and (d), 1501, and 1502(a) of title 31” substituted for “section 1311 of the Supplemental Appropriation Act, 1955 (31 U.S.C. 200)” on authority of Pub. L. 97-258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1986—Subsecs. (b)(2)(B), (i)(3)(E), (5)(A), (B). Pub. L. 99-514 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”, which for purposes of codification was translated as “title 26” thus requiring no change in text.

1983—Subsec. (i). Pub. L. 98-120 added subsec. (i).

1981—Subsec. (b). Pub. L. 97-35, § 2523(1), amended subsec. (b) generally, substituting provisions limiting the maximum rate of interest on loans guaranteed under this part on the basis of comparison with other Federally guarantee loans for provisions limiting the maximum interest rate on the basis of 15 U.S.C. 636(a) and inserting provisions prohibiting the guarantee of loans if the interest is tax exempt.

Subsec. (c). Pub. L. 97-35, § 2523(2), inserted references to section 2344 of this title, alternative limitation of useful life of asset, and prohibition of guarantees in excess of 10 years in provisions preceding par. (1) and inserted “or servicing” in par. (2).

Subsec. (d). Pub. L. 97-35, § 2523(3), designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 97-35, § 2523(4), substituted provisions respecting conditions applicable to loan guarantees for provisions relating to percentage maximum on loan guarantees which are covered in par. (1).

EFFECTIVE DATE OF 1983 AMENDMENT

Section 4(b) of Pub. L. 98-120 provided that: “The amendment made by subsection (a) [amending this section] shall become effective on the date of the enactment of this Act [Oct. 12, 1983].”

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, except as otherwise provided with respect to applica-

tions for adjustment assistance, see section 2529 of Pub. L. 97-35, set out as a note under section 2343 of this title.

TERMINATION DATE

No technical assistance to be provided under this part after Dec. 31, 2007, see section 285 of Pub. L. 93-618, as amended, set out as a note preceding section 2271 of this title.

§ 2346. Delegation of functions to Small Business Administration

(a) Delegation of functions as to eligibility certification

In the case of any firm which is small (within the meaning of the Small Business Act [15 U.S.C. 631 et seq.] and regulations promulgated thereunder), the Secretary may delegate all of his functions under this part (other than the functions under sections 2341 and 2342(d)¹ of this title with respect to the certification of eligibility and section 2354 of this title) to the Administrator of the Small Business Administration.

(b) Authorization of appropriations

There are authorized to be appropriated to the Secretary \$16,000,000 for each of fiscal years 2003 through 2007, and \$4,000,000 for the 3-month period beginning on October 1, 2007, to carry out the Secretary's functions under this part in connection with furnishing adjustment assistance to firms. Amounts appropriated under this subsection shall remain available until expended.

(c) Transfer of unexpended appropriations

The unexpended balances of appropriations authorized by section 1912(d)¹ of this title are transferred to the Secretary to carry out his functions under this part.

(Pub. L. 93-618, title II, § 256, Jan. 3, 1975, 88 Stat. 2032; Pub. L. 97-35, title XXV, § 2524, Aug. 13, 1981, 95 Stat. 892; Pub. L. 99-272, title XIII, § 13008(b), Apr. 7, 1986, 100 Stat. 305; Pub. L. 100-418, title I, § 1426(b)(2), Aug. 23, 1988, 102 Stat. 1251; Pub. L. 103-66, title XIII, § 13803(a)(2), Aug. 10, 1993, 107 Stat. 668; Pub. L. 105-277, div. J, title I, § 1012(c), Oct. 21, 1998, 112 Stat. 2681-901; Pub. L. 106-113, div. B, § 1000(a)(5) [title VII, § 702(c)], Nov. 29, 1999, 113 Stat. 1536, 1501A-319; Pub. L. 107-210, div. A, title I, §§ 111(b), 131, Aug. 6, 2002, 116 Stat. 936, 946; Pub. L. 108-429, title II, § 2004(a)(3), Dec. 3, 2004, 118 Stat. 2589; Pub. L. 110-89, § 1(b), Sept. 28, 2007, 121 Stat. 982.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (a), is Pub. L. 85-536, § 2 (1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

Section 2342(d) of this title, referred to in subsec. (a), was redesignated section 2342(c) of this title by Pub. L. 99-272, title XIII, § 13006(a)(2), Apr. 7, 1986, 100 Stat. 304.

Section 1912 of this title, referred to in subsec. (c), was repealed by section 602(e) of Pub. L. 93-618. See section 2341 et seq. of this title for successor provisions.

AMENDMENTS

2007—Subsec. (b). Pub. L. 110-89 inserted “and \$4,000,000 for the 3-month period beginning on October 1, 2007,” after “2007.”

¹ See References in Text note below.

2004—Subsec. (b). Pub. L. 108-429 deemed amendment by Pub. L. 107-210, § 111(b), never to have been enacted. See 2002 Amendment note below.

2002—Subsec. (b). Pub. L. 107-210, § 131, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: “There are hereby authorized to be appropriated to the Secretary for the period beginning October 1, 1998, and ending September 30, 2001, such sums as may be necessary to carry out his functions under this part in connection with furnishing adjustment assistance to firms (including, but not limited to, the payment of principal, interest, and reasonable costs incident to default on loans guaranteed by the Secretary under the authority of this part), which sums are authorized to be appropriated to remain available until expended.”

Pub. L. 107-210, § 111(b), substituted “October 1, 2001, and ending September 30, 2007,” for “October 1, 1998, and ending September 30, 2001”. Pub. L. 108-429, title II, § 2004(a)(3), provided that the amendment by Pub. L. 107-210, § 111(b), shall be deemed never to have been enacted.

1999—Subsec. (b). Pub. L. 106-113 substituted “September 30, 2001” for “June 30, 1999”.

1998—Subsec. (b). Pub. L. 105-277 substituted “for the period beginning October 1, 1998, and ending June 30, 1999” for “for fiscal years 1993, 1994, 1995, 1996, 1997, and 1998”.

1993—Subsec. (b). Pub. L. 103-66 substituted “1993, 1994, 1995, 1996, 1997, and 1998” for “1988, 1989, 1990, 1991, 1992, and 1993”.

1988—Subsec. (b). Pub. L. 100-418 substituted “1988, 1989, 1990, 1991, 1992, and 1993” for “1986, 1987, 1988, 1989, 1990, and 1991”.

1986—Subsec. (b). Pub. L. 99-272 inserted “for fiscal years 1986, 1987, 1988, 1989, 1990, and 1991” after “Secretary”, struck out “from time to time” after “as may be necessary”, and struck out “Direct loans and commitments to guarantee loans may be made under this part during any fiscal year only to such extent and in such amounts as are provided in advance in appropriations Acts.” after “available until expended.”

1981—Subsec. (b). Pub. L. 97-35 inserted provisions relating to payment of principal, interest, and reasonable costs, incident to defaults on guaranteed loans and provisions relating to direct loans and commitments to guarantee loans.

EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by Pub. L. 110-89 effective Oct. 1, 2007, see section 1(e) of Pub. L. 110-89, set out as a note under section 2317 of this title.

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-210 applicable to petitions for certification filed under this part or part 2 of this subchapter on or after the date that is 90 days after Aug. 6, 2002, except as otherwise provided, see section 151 of Pub. L. 107-210, set out as a note preceding section 2271 of this title.

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-113 effective as of July 1, 1999, see section 1000(a)(5) [title VII, § 702(e)] of Pub. L. 106-113, set out as a note under section 2317 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Parts 2 and 3 of this subchapter applicable as if the amendment of this section by Pub. L. 99-272 had taken effect Dec. 18, 1985, see section 13009(c) of Pub. L. 99-272, set out as a note under section 2291 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-35 effective Aug. 13, 1981, except as otherwise provided with respect to applications for adjustment assistance, see section 2529 of Pub. L. 97-35, set out as a note under section 2343 of this title.