Stat. 901, which also amended section 14 of act Jan. 22, 1932, was repealed by section 206(z) of act June 30, 1947.

Section 615, act Jan. 22, 1932, ch. 8, § 15, 47 Stat. 11, relating to reports to Congress, was omitted by act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 616, act Jan. 22, 1932, ch. 8, § 16, 47 Stat. 11, related to false statements, forgery, embezzlement, and use of words ''Reconstruction Finance Corporation'', and is now covered by sections 433, 493, 657, 709, 1006, 1014, and 1904 of Title 18, Crimes and Criminal Procedure.

### § 616a. Transferred

CODIFICATION

Section 616a, acts Mar. 26, 1934, ch. 90, 48 Stat. 500; June 29, 1936, ch. 858, title II, § 204, 49 Stat. 1987, which related to the shipment of exports financed by the Government in United States vessels, was transferred to section 1241–1 of Title 46, Appendix, Shipping.

### §§ 617 to 619. Repealed or Omitted

Section 617, act Jan. 22, 1932, ch. 8, § 17, 47 Stat. 12, was omitted by act June 30, 1947, ch. 166, title I, § 1, 61 Stat. 202, which generally amended the Reconstruction Finance Corporation Act, act Jan. 22, 1932, ch. 8, 47 Stat. 5.

Section 618, act June 30, 1947, ch. 166, title II, § 208, 61 Stat. 209, related to purchase and sale of surplus property, and was repealed by act of May 25, 1948, ch. 334, § 7, 62 Stat. 265.

Section 619, act July 29, 1947, ch. 346, title II, § 201, 61 Stat. 515, related to limitations on use of funds of the Corporation, which Corporation was abolished by section 6 of Reorg. Plan No. 1 of 1957, eff. June 30, 1957, 22 FR 4633, 71 Stat. 647. Reorg. Plan No. 1 of 1957 is set out preceding section 601 of this title.

## CHAPTER 14A—AID TO SMALL BUSINESS

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## § 631. Declaration of policy

### (a) Aid, counsel, assistance, etc., to small business concerns

The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of such competition is basic not only to the economic well-being but to the security of this Nation. Such security and well-being cannot be realized unless the actual and potential capacity of small business is encouraged and developed. It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect, insofar as is possible, the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the Government (including but not limited to contracts or subcontracts for maintenance, repair, and construction) be placed with small-business enterprises, to insure that a fair proportion of the total sales of Government property be made to such enterprises, and to maintain and strengthen the overall economy of the Nation.

### (b) Assistance to compete in international markets

(1) It is the declared policy of the Congress that the Federal Government, through the Small Business Administration, acting in cooperation with the Department of Commerce and other relevant State and Federal agencies, should aid and assist small businesses, as defined under this chapter, to increase their ability to compete in international markets by—

(A) enhancing their ability to export;

(B) facilitating technology transfers;

(C) enhancing their ability to compete effectively and efficiently against imports;

(D) increasing the access of small businesses to long-term capital for the purchase of new plant and equipment used in the production of goods and services involved in international trade;

(E) disseminating information concerning State, Federal, and private programs and initiatives to enhance the ability of small businesses to compete in international markets; and

(F) ensuring that the interests of small businesses are adequately represented in bilateral and multilateral trade negotiations.

(2) The Congress recognizes that the Department of Commerce is the principal Federal agency for trade development and export promotion and that the Department of Commerce and the Small Business Administration work together to advance joint interests. It is the purpose of this chapter to enhance, not alter, their respective roles.

### (c) Aid for agriculturally related industries; financial assistance

It is the declared policy of the Congress that the Government, through the Small Business Administration, should aid and assist small business concerns which are engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and the financial assistance programs authorized by this chapter are also to be used to assist such concerns.

### (d) Use of assistance programs to establish, preserve, and strengthen small business concerns

(1) The assistance programs authorized by sections 636(i) and 636(j) of this title are to be utilized to assist in the establishment, preservation, and strengthening of small business concerns and improve the managerial skills employed in such enterprises, with special attention to small business concerns (1) located in urban or rural areas with high proportions of unemployed or low-income individuals; or (2) owned by low-income individuals; and to mobilize for these objectives private as well as public managerial skills and resources.

(2)(A) With respect to the programs authorized by section 636(j) of this title, the Congress finds—

(i) that ownership and control of productive capital is concentrated in the economy of the United States and certain groups, therefore, own and control little productive capital;

(ii) that certain groups in the United States own and control little productive capital because they have limited opportunities for small business ownership;

(iii) that the broadening of small business ownership among groups that presently own and control little productive capital is essential to provide for the well-being of this Nation by promoting their increased participation in the free enterprise system of the United States;

(iv) that such development of business ownership among groups that presently own and control little productive capital will be greatly facilitated through the creation of a small business ownership development program, which shall provide services, including, but not limited to, financial, management, and technical assistance.[1]

(v) that the power to let Federal contracts pursuant to section 637(a) of this title can be an effective procurement assistance tool for development of business ownership among groups that own and control little productive capital; and

(vi) that the procurement authority under section 637(a) of this title shall be used only as a tool for developing business ownership among groups that own and control little productive capital.

(B) It is therefore the purpose of the programs authorized by section 636(j) of this title to—

[1] So in original. The period probably should be a semicolon.

(i) foster business ownership and development by individuals in groups that own and control little productive capital; and

(ii) promote the competitive viability of such firms in the marketplace by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.

**(e) Assistance to victims of floods, etc., and those displaced as result of federally aided construction programs**

Further, it is the declared policy of the Congress that the Government should aid and assist victims of floods and other catastrophes, and small-business concerns which are displaced as a result of federally aided construction programs.

**(f) Findings; purpose**

(1) with[2] respect to the Administration's business development programs the Congress finds—

(A) that the opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic equality for such persons and improve the functioning of our national economy;

(B) that many such persons are socially disadvantaged because of their identification as members of certain groups that have suffered the effects of discriminatory practices or similar invidious circumstances over which they have no control;

(C) that such groups include, but are not limited to, Black Americans, Hispanic Americans, Native Americans, Indian tribes, Asian Pacific Americans, Native Hawaiian Organizations, and other minorities;

(D) that it is in the national interest to expeditiously ameliorate the conditions of socially and economically disadvantaged groups;

(E) that such conditions can be improved by providing the maximum practicable opportunity for the development of small business concerns owned by members of socially and economically disadvantaged groups;

(F) that such development can be materially advanced through the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from such concerns; and

(G) that such procurements also benefit the United States by encouraging the expansion of suppliers for such procurements, thereby encouraging competition among such suppliers and promoting economy in such procurements.

(2) It is therefore the purpose of section 637(a) of this title to—

(A) promote the business development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete on an equal basis in the American economy;

(B) promote the competitive viability of such concerns in the marketplace by providing such available contract, financial, technical, and mangement[3] assistance as may be necessary; and

(C) clarify and expand the program for the procurement by the United States of articles, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.

**(g) Assistance to disaster victims under disaster loan program**

In administering the disaster loan program authorized by section 636 of this title, to the maximum extent possible, the Administration shall provide assistance and counseling to disaster victims in filing applications, providing information relevant to loan processing, and in loan closing and prompt disbursement of loan proceeds and shall give the disaster program a high priority in allocating funds for administrative expenses.

**(h) Assistance to women owned business**

(1) With respect to the programs and activities authorized by this chapter, the Congress finds that—

(A) women owned business has become a major contributor to the American economy by providing goods and services, revenues, and jobs;

(B) over the past two decades there have been substantial gains in the social and economic status of women as they have sought economic equality and independence;

(C) despite such progress, women, as a group, are subjected to discrimination in entrepreneurial endeavors due to their gender;

(D) such discrimination takes many overt and subtle forms adversely impacting the ability to raise or secure capital, to acquire managerial talents, and to capture market opportunities;

(E) it is in the national interest to expeditiously remove discriminatory barriers to the creation and development of small business concerns owned and controlled by women;

(F) the removal of such barriers is essential to provide a fair opportunity for full participation in the free enterprise system by women and to further increase the economic vitality of the Nation;

(G) increased numbers of small business concerns owned and controlled by women will directly benefit the United States Government by expanding the potential number of suppliers of goods and services to the Government; and

(H) programs and activities designed to assist small business concerns owned and controlled by women must be implemented in such a way as to remove such discriminatory barriers while not adversely affecting the rights of socially and economically disadvantaged individuals.

(2) It is, therefore, the purpose of those programs and activities conducted under the authority of this chapter that assist women entrepreneurs to—

(A) vigorously promote the legitimate interests of small business concerns owned and controlled by women;

(B) remove, insofar as possible, the discriminatory barriers that are encountered by

[2] So in original. Probably should be capitalized.

[3] So in original. Probably should be ''management''.

women in accessing capital and other factors of production; and

(C) require that the Government engage in a systematic and sustained effort to identify, define and analyze those discriminatory barriers facing women and that such effort directly involve the participation of women business owners in the public/private sector partnership.

**(i) Prohibition on use of funds for individuals not lawfully within United States**

None of the funds made available pursuant to this chapter 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.

**(j) Contract bundling**

In complying with the statement of congressional policy expressed in subsection (a) of this section, relating to fostering the participation of small business concerns in the contracting opportunities of the Government, each Federal agency, to the maximum extent practicable, shall—

(1) comply with congressional intent to 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 their participation; and

(3) avoid unnecessary and unjustified bundling of contract requirements that precludes small business participation in procurements as prime contractors.

(Pub. L. 85–536, §2[2], July 18, 1958, 72 Stat. 384; Pub. L. 87–70, title III, §305(b), June 30, 1961, 75 Stat. 167; Pub. L. 87–305, §6, Sept. 26, 1961, 75 Stat. 667; Pub. L. 93–386, §2(a)(1), Aug. 23, 1974, 88 Stat. 742; Pub. L. 94–305, title I, §112(a), June 4, 1976, 90 Stat. 667; Pub. L. 95–507, title II, §§201, 203, Oct. 24, 1978, 92 Stat. 1760, 1763; Pub. L. 96–302, title I, §118(a), July 2, 1980, 94 Stat. 840; Pub. L. 99–272, title XVIII, §18015(a), Apr. 7, 1986, 100 Stat. 370; Pub. L. 100–418, title VIII, §8002, Aug. 23, 1988, 102 Stat. 1553; Pub. L. 100–533, title I, §101, Oct. 25, 1988, 102 Stat. 2689; Pub. L. 100–590, title I, §118, Nov. 3, 1988, 102 Stat. 2999; Pub. L. 100–656, title II, §§204, 207(b), Nov. 15, 1988, 102 Stat. 3859, 3861; Pub. L. 101–37, §6(c), June 15, 1989, 103 Stat. 72; Pub. L. 103–403, title VI, §609, Oct. 22, 1994, 108 Stat. 4204; Pub. L. 105–135, title IV, §411, Dec. 2, 1997, 111 Stat. 2617.)

CODIFICATION

This chapter was originally enacted as title II of act July 30, 1953, ch. 282, 67 Stat. 232, and designated as the ''Small Business Act of 1953''. Title II of act July 30, 1953, was amended by acts June 30, 1955, ch. 251, §4, 69 Stat. 225; Aug. 9, 1955, ch. 628, 69 Stat. 547; Feb. 2, 1956, ch. 29, §§1, 2, 70 Stat. 10; Pub. L. 85–4, §§1, 2, Feb. 11, 1957, 71 Stat. 1; Pub. L. 85–120, §§1, 2, Aug. 3, 1957, 71 Stat. 341; Pub. L. 85–335, Feb. 22, 1958, 72 Stat. 27. Section 1 of Pub. L. 85–536 withdrew title II of act July 30, 1953, as part of that act, and made title II a separate act to be known as the ''Small Business Act''. The Small Business Act, as amended by Pub. L. 85–536, is classified to this chapter.

AMENDMENTS

1997—Subsec. (j). Pub. L. 105–135 added subsec. (j).

1994—Subsec. (i). Pub. L. 103–403 added subsec. (i).

1989—Subsec. (f). Pub. L. 101–37 made technical correction to directory language of Pub. L. 100–656, §207(b), which did not result in any change in text, see 1988 Amendment note below.

1988—Subsecs. (b), (c). Pub. L. 100–418 added subsec. (b) and redesignated former subsec. (b) as (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 100–418 redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Subsec. (d)(2)(A)(v). Pub. L. 100–656, §204(b), which directed amendment of subsec. (c)(2)(A)(v) by striking out ''sole source'' after ''power to let'' was executed to subsec. (d)(2)(A)(v) to reflect the probable intent of Congress and the intervening redesignation of subsec. (c) as (d) by Pub. L. 100–418.

Subsec. (d)(2)(B). Pub. L. 100–656, §204(a)(1), which directed general amendment of subsec. (c)(2)(B), was executed to subsec. (d)(2)(B) to reflect the probable intent of Congress and the intervening redesignation of subsec. (c) as (d) by Pub. L. 100–418. Prior to amendment, subpar. (B) read as follows: ''It is, therefore, the purpose of the programs authorized by section 636(j) of this title to—

''(i) foster business ownership by individuals in groups that own and control little productive capital; and

''(ii) promote the competitive viability of such firms by creating a small business and capital ownership development program to provide such available financial, technical, and management assistance as may be necessary.''

Subsecs. (e), (f). Pub. L. 100–418 redesignated subsecs. (d) and (e) as (e) and (f), respectively.

Subsec. (f)(1)(C). Pub. L. 100–656, §207(b), as amended by Pub. L. 101–37, which directed amendment of subsec. (e)(1)(C) by inserting ''Native Hawaiian Organizations,'' was executed to subsec. (f)(1)(C) to reflect the probable intent of Congress and the intervening redesignation of subsec. (e) as (f) by Pub. L. 100–418.

Subsec. (f)(2). Pub. L. 100–656, §204(a)(2), which directed general amendment of subsec. (e)(2), was executed to subsec. (f)(2) to reflect the probable intent of Congress and the intervening redesignation of subsec. (e) as (f) by Pub. L. 100–418. Prior to amendment, par. (2) read as follows: ''It is, therefore, the purpose of section 637(a) of this title to—

''(A) foster business ownership by individuals who are both socially and economically disadvantaged;

''(B) promote the competitive viability of such firms by providing such available contract, financial, technical, and management assistance as may be necessary; and

''(C) clarify and expand the program for the procurement by the United States of articles, equipment, supplies, services, materials, and construction work from small business concerns owned by socially and economically disadvantaged individuals.''

Subsec. (g). Pub. L. 100–590, §118, added subsec. (g).

Subsec. (h). Pub. L. 100–533 added subsec. (h).

1986—Subsec. (e)(1)(C). Pub. L. 99–272 inserted ''Indian tribes,''.

1980—Subsec. (e)(1)(C). Pub. L. 96–302 included among the disadvantaged minorities Asian Pacific Americans.

1978—Subsec. (c). Pub. L. 95–507, §203, designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 95–507, §201, added subsec. (e).

1976—Subsecs. (b) to (d). Pub. L. 94–305 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

1974—Subsecs. (b), (c). Pub. L. 93–386 added subsec. (b) and redesignated former subsec. (b) as (c).

1961—Subsec. (a). Pub. L. 87–305 inserted ''or subcontracts'' after ''contracts'' in two places.

Subsec. (b). Pub. L. 87–70 included small-business concerns which are displaced as a result of federally aided construction programs.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 3 of Pub. L. 105–135 provided that: ''This Act [see Short Title of 1997 Amendment note below] and the amendments made by this Act shall take effect on October 1, 1997.''

EFFECTIVE DATE OF 1989 AMENDMENT

Section 32 of Pub. L. 101–37 provided that: ''The amendments made by this Act [see Short Title of 1989 Amendment note below] shall apply as if included in the Business Opportunity Development Reform Act of 1988 [Pub. L. 100–656].''

EFFECTIVE DATE OF 1988 AMENDMENTS

Section 803 of Pub. L. 100–656, as amended by Pub. L. 101–37, § 31, June 15, 1989, 103 Stat. 76, provided that:

''(a) IN GENERAL.—Except as otherwise provided, the following provisions (and the amendments made by such provisions) shall take effect on the date of the enactment of this Act [Nov. 15, 1988]:

''(1) Sections 1 and 2 [enacting provisions set out as notes under this section and section 636 of this title].

''(2) Section 101 [enacting provisions set out as a note under section 636 of this title].

''(3) Sections 202, 203, 204, 206, and 207 [amending this section and sections 636 and 637 of this title].

''(4) Sections 301(a) and 303(d), (e), and (f) [amending sections 636 and 637 of this title and enacting provisions set out as a note under section 637 of this title].

''(5) Sections 405, 406, 408, and 410 [amending sections 636, 639, and 645 of this title and enacting provisions set out as a note under section 636 of this title].

''(6) Sections 504 and 505 [amending section 636 of this title and enacting provisions set out as notes under section 636 of this title].

''(7) Sections 601 and 603 [amending section 644 of this title].

''(8) Titles VII and VIII [amending section 632 of this title and section 541 of former Title 40, Public Buildings, Property, and Works, enacting provisions set out as notes under sections 632, 636, and 644 of this title, and amending provisions set out as a note under section 644 of this title].

''(9) Sections 7(j)(13)(G) and 7(j)(13)(I) of the Small Business Act [section 636(j)(13)(G), (I) of this title] (as added by section 301(b)).

''(b) SPECIAL RULES.—(1) Except as otherwise provided, the following sections (and the amendments made by such sections) shall take effect on August 15, 1989:

''(A) Sections 201, 205, and 208 [amending sections 636 and 637 of this title].

''(B) Sections 301(b), 301(c), 303(a), 303(c), 303(g), 303(h), and 304 [amending sections 636 and 637 of this title and enacting provisions set out as a note under section 637 of this title].

''(C) Sections 401, 402, 403, 404, and 409 [amending sections 633 and 637 of this title and enacting provisions set out as a note under section 633 of this title].

''(D) Section 602 [enacting provisions set out as a note under section 637 of this title].

''(2) Section 302 [amending section 636 of this title] shall take effect on June 1, 1989.

''(3) Section 407 [amending section 637 of this title] shall take effect with respect to contracts entered into on or after June 1, 1989.

''(4) The following sections (and the amendments made by such sections) shall take effect on October 1, 1989:

''(A) Section 209 [amending section 637 of this title].

''(B) Section 303(b) [amending section 637 of this title].

''(C) Sections 501, 502, and 503 [amending sections 637 and 644 of this title].

''(D) Section 7(j)(13)(E) of the Small Business Act [section 636(j)(13)(E) of this title] (as added by section 301(b) of this Act).''

Section 137 of title I of Pub. L. 100–590 provided that: ''This title [enacting sections 687m and 697c of this title, amending this section and sections 631b, 632, 633, 634, 636, 637, 638, 644, 648, 681, 687, and 695 to 697b of this title, repealing section 694 of this title, enacting provisions set out as notes under this section and sections 636, 637, 639, 644, 694, and 697 of this title, and amending provisions set out as notes under this section and section 637 of this title] shall be effective on the date of enactment [Nov. 3, 1988], except that sections 118 through 122 [amending this section and sections 632 and 636 of this title] shall be effective for all loan applications resulting from disaster declarations made on or after August 1, 1988, or from disaster declarations whose filing periods were open on October 1, 1988. Any new credit authority provided for in this Act [see Short Title of 1988 Amendment note below] is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.''

Section 8014 of title VIII of Pub. L. 100–418 provided that: ''This title [amending this section and sections 636, 648, 649, and 696 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 638 of this title] shall become effective on the date of its enactment [Aug. 23, 1988].''

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1918 of Pub. L. 97–35 provided that: ''Sections 1908, 1909, and 1913 of this title [amending sections 633, 636, and 696 of this title] shall be effective October 1, 1981, and section 1910 of this title [amending section 636 of this title] shall be effective as provided therein [Oct. 1, 1985]. All other provisions of this title [amending sections 632, 633, 636, and 639 of this title, repealing section 636a of this title, enacting provisions set out as notes under this section and section 636 of this title, and amending provisions set out as notes under this section] shall be effective immediately [Aug. 13, 1981] but shall not affect any financing made, obligated, or committed under the Small Business Act [this chapter] or the Small Business Investment Act of 1958 [chapter 14B of this title] prior to the effective date hereof.''

EFFECTIVE DATE OF 1980 AMENDMENT

Section 507 of Pub. L. 96–302 provided that: ''This Act [enacting sections 631a, 631b, 648, and 697 of this title, amending this section, sections 632, 633, 634, 634d, 636, 637, 644, 647, 694–2, 694b, and 694c of this title, section 5315 of Title 5, Government Organization and Employees, and sections 1961 and 1964 of Title 7, Agriculture, enacting provisions set out as notes under this section and sections 636, 637, and 648 of this title, and amending provisions set out as a note under this section] shall take effect October 1, 1980.''

SHORT TITLE OF 2004 AMENDMENT

Pub. L. 108–447, div. K, § 1(a), Dec. 8, 2004, 118 Stat. 3441, provided that: ''This division [enacting sections 631c and 657g of this title, amending sections 632 to 634, 636, 637, 648, 650, 654, 657a to 657c, 683, 687, 694b, and 695 to 697 of this title, enacting provisions set out as notes under sections 632, 633, 636, and 637 of this title, amending provisions set out as notes under this section and section 657b of this title, and repealing provisions set out as a note under section 694b of this title] may be cited as the 'Small Business Reauthorization and Manufacturing Assistance Act of 2004'.''

SHORT TITLE OF 2001 AMENDMENT

Pub. L. 107–50, § 1, Oct. 15, 2001, 115 Stat. 263, provided that: ''This Act [amending sections 638 and 657d of this title and enacting provisions set out as a note under section 638 of this title] may be cited as the 'Small Business Technology Transfer Program Reauthorization Act of 2001'.''

SHORT TITLE OF 2000 AMENDMENT

Pub. L. 106–554, § 1(a)(9) [§ 1(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–667, provided that: ''This Act [H.R. 5667, as enacted by section 1(a)(9) of Pub. L. 106–554, see Tables

for classification] may be cited as the 'Small Business Reauthorization Act of 2000'.''

Pub. L. 106–554, §1(a)(9) [title I, §101], Dec. 21, 2000, 114 Stat. 2763, 2763A–668, provided that: ''This title [enacting sections 657d and 657e of this title, amending section 638 of this title, enacting provisions set out as notes under sections 638 and 657d of this title, and amending provisions set out as notes under this section and section 638 of this title] may be cited as the 'Small Business Innovation Research Program Reauthorization Act of 2000'.''

Pub. L. 106–554, §1(a)(9) [title II, §201], Dec. 21, 2000, 114 Stat. 2763, 2763A–681, provided that: ''This title [amending sections 634, 636, and 696 of this title] may be cited as the 'Small Business Loan Improvement Act of 2000'.''

Pub. L. 106–554, §1(a)(9) [title V, §501], Dec. 21, 2000, 114 Stat. 2763, 2763A–691, provided that: ''This title [amending sections 637, 648, 654, and 657a of this title and amending provisions set out as notes under this section and sections 637 and 644 of this title] may be cited as the 'Small Business Programs Reauthorization Act of 2000'.''

Pub. L. 106–554, §1(a)(9) [title VI, subtitle A, §601], Dec. 21, 2000, 114 Stat. 2763, 2763A–697, provided that: ''This subtitle [amending section 632 of this title] may be cited as the 'HUBZones in Native America Act of 2000'.''

SHORT TITLE OF 1999 AMENDMENTS

Pub. L. 106–165, §1, Dec. 9, 1999, 113 Stat. 1795, provided that: ''This Act [amending section 656 of this title and enacting provisions set out as notes under section 656 of this title] may be cited as the 'Women's Business Centers Sustainability Act of 1999'.''

Pub. L. 106–50, §1, Aug. 17, 1999, 113 Stat. 233, provided that: ''This Act [enacting sections 657b and 657c of this title, amending sections 631b, 632, 633, 634b, 636, 637, 644, and 695 of this title, enacting provisions set out as notes under sections 633, 636, 637, 657b, and 657c of this title, and amending provisions set out as a note under this section] may be cited as the 'Veterans Entrepreneurship and Small Business Development Act of 1999'.''

Pub. L. 106–22, §1, Apr. 27, 1999, 113 Stat. 36, provided that: ''This Act [amending section 636 of this title] may be cited as the 'Microloan Program Technical Corrections Act of 1999'.''

Pub. L. 106–17, §1, Apr. 6, 1999, 113 Stat. 27, provided that: ''This Act [amending section 656 of this title and enacting provisions set out as a note under section 656 of this title] may be cited as the 'Women's Business Center Amendments Act of 1999'.''

Pub. L. 106–8, §1, Apr. 2, 1999, 113 Stat. 13, provided that: ''This Act [amending section 636 of this title, enacting provisions set out as notes under section 636 of this title, and repealing provisions set out as a note under section 636 of this title] may be cited as the 'Small Business Year 2000 Readiness Act'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title IX, §901, Oct. 21, 1998, 112 Stat. 2681–707, provided that: ''This title [enacting section 654 of this title, amending section 648 of this title, and enacting provisions set out as notes under section 654 of this title] may be cited as the 'Drug-Free Workplace Act of 1998'.''

SHORT TITLE OF 1997 AMENDMENT

Pub. L. 105–135, §1(a), Dec. 2, 1997, 111 Stat. 2592, provided that: ''This Act [enacting sections 657a and 7109 of this title and former section 7109 of this title, amending this section, sections 631b, 632, 636, 637, 638, 644, 645, 648, 656, 662, 681 to 683, 687b, 687m, 694b, 696, 697, 697e, 7103, 7104, 7106, 7107, and 7110 of this title, section 2323 of Title 10, Armed Forces, section 1441a of Title 12, Banks and Banking, sections 3718, 6701, and 7505 of Title 31, Money and Finance, sections 405 and 417a of Title 41, Public Contracts, section 13556 of Title 42, The Public Health and Welfare, and sections 47107 and 47113 of Title 49, Transportation, enacting provisions set out as notes under this section, sections 632 to 634, 636, 637, 638, 656, 657a, and 697e of this title, and section 405 of Title 41, and amending provisions set out as notes under this section and sections 637, 644, 694b, and 697e of this title] may be cited as the 'Small Business Reauthorization Act of 1997'.''

Section 601 of title VI of Pub. L. 105–135 provided that: ''This title [enacting section 657a of this title, amending sections 631b, 632, 637, 644, 645, and 694b of this title, section 2323 of Title 10, Armed Forces, section 1441a of Title 12, Banks and Banking, sections 3718, 6701, and 7505 of Title 31, Money and Finance, sections 405 and 417a of Title 41, Public Contracts, section 13556 of Title 42, The Public Health and Welfare, and sections 47107 and 47113 of Title 49, Transportation, enacting provisions set out as notes under this section and sections 632 and 657a of this title, and amending provisions set out as notes under this section] may be cited as the 'HUBZone Act of 1997'.''

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104–208, div. D, §1(a), Sept. 30, 1996, 110 Stat. 3009–724, provided that: ''This division [amending sections 80a–18, 632 to 634, 636, 638, 648, 662, 681 to 683, 687, 687b, 687d, 687k to 687m, 694b, 696, 697, 697b, and 697f of this title and section 1431 of Title 12, Banks and Banking, repealing sections 687i and 687j of this title, enacting provisions set out as notes under this section and sections 632 to 634, 636, 681, 683, 694b, and 695 of this title, amending provisions set out as notes under this section and section 644 of this title, and repealing provisions set out as a note under section 634 of this title] may be cited as the 'Small Business Programs Improvement Act of 1996'.''

SHORT TITLE OF 1995 AMENDMENT

Pub. L. 104–36, §1, Oct. 12, 1995, 109 Stat. 295, provided that: ''This Act [amending sections 634, 636, and 697 of this title, enacting provisions set out as a note under section 634 of this title, and amending provisions set out as a note under section 694b of this title] may be cited as the 'Small Business Lending Enhancement Act of 1995'.''

SHORT TITLE OF 1994 AMENDMENT

Pub. L. 103–403, §1(a), Oct. 22, 1994, 108 Stat. 4175, provided that: ''This Act [enacting chapter 97 of this title and sections 697d to 697f of this title, amending this section and sections 632 to 634, 634d, 636 to 638, 644, 648, 652, 656, 683, 687, and 697 of this title, repealing section 697e of this title, enacting provisions set out as notes under this section and sections 634b, 636, 637, 644, 661, and 697d to 697f of this title, amending provisions set out as notes under this section and sections 633, 636, 637, and 694b of this title, and repealing provisions set out as a note under section 697 of this title] may be cited as the 'Small Business Administration Reauthorization and Amendments Act of 1994'.''

SHORT TITLE OF 1993 AMENDMENT

Pub. L. 103–81, §1(a), Aug. 13, 1993, 107 Stat. 780, provided that: ''This Act [amending sections 634, 636, 648, 652, and 7107 of this title, enacting provisions set out as notes under sections 634 and 636 of this title, amending provisions set out as notes under this section and section 648 of this title, and repealing provisions set out as notes under sections 634 and 636 of this title] may be cited as the 'Small Business Guaranteed Credit Enhancement Act of 1993'.''

SHORT TITLE OF 1992 AMENDMENTS

Pub. L. 102–564, §1(a), Oct. 28, 1992, 106 Stat. 4249, provided that: ''This Act [amending sections 634, 636, 637, and 638 of this title and section 4124 of Title 18, Crimes and Criminal Procedure, enacting provisions set out as notes under this section and section 638 of this title, amending provisions set out as notes under sections 644

and 648 of this title, and repealing provisions set out as a note under section 638 of this title] may be cited as the 'Small Business Research and Development Enhancement Act of 1992'.''

Pub. L. 102–564, title I, § 101, Oct. 28, 1992, 106 Stat. 4249, provided that: ''This title [amending section 638 of this title and enacting provisions set out as notes under section 638 of this title] may be cited as the 'Small Business Innovation Research Program Reauthorization Act of 1992'.''

Pub. L. 102–564, title II, § 201, Oct. 28, 1992, 106 Stat. 4256, provided that: ''This title [amending section 638 of this title and enacting provisions set out as notes under section 638 of this title] may be cited as the 'Small Business Technology Transfer Act of 1992'.''

Pub. L. 102–366, § 1(a), Sept. 4, 1992, 106 Stat. 986, provided that: ''This Act [amending sections 632, 636, 637, 644, 648, 661, 662, 682, 683, 685, 686, 687, 687b, and 687*l* of this title, enacting provisions set out as notes under this section and sections 632, 634, 636, 644, 648, 661, 681, 687b, and 694b of this title, and amending provisions set out as notes under this section and sections 633, 636, and 644 of this title] may be cited as the 'Small Business Credit and Business Opportunity Enhancement Act of 1992'.''

Pub. L. 102–366, title I, § 101, Sept. 4, 1992, 106 Stat. 987, provided that: ''This subtitle [subtitle A (§§ 101–104) of title I of Pub. L. 102–366, amending section 636 of this title and enacting and amending provisions set out as notes under this section] may be cited as the 'Small Business Credit Crunch Relief Act of 1992'.''

Pub. L. 102–366, title I, § 111, Sept. 4, 1992, 106 Stat. 989, provided that: ''This subtitle [subtitle B (§§ 111–115) of title I of Pub. L. 102–366, amending section 636 of this title, enacting provisions set out as notes under section 636 of this title, and amending provisions set out as a note under this section] may be cited as the 'Microlending Expansion Act of 1992'.''

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–191, § 1, Dec. 5, 1991, 105 Stat. 1589, provided that: ''This Act [enacting section 656 of this title, amending sections 636, 637, and 7103 of this title, enacting provisions set out as a note under section 637 of this title] may be cited as the 'Women's Business Development Act of 1991'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–574, § 1, Nov. 15, 1990, 104 Stat. 2814, provided that: ''This Act [enacting sections 653 and 654 of this title, amending sections 633, 636, 637, 639, 644, 648, 683, 695, and 696 of this title, enacting provisions set out as notes under this section and sections 633, 637, 648, 648a, 653, and 683 of this title and section 601 of Title 5, Government Organization and Employees, amending provisions set out as notes under this section and sections 633, 636, 637, 644, and 694b of this title and section 502 of Title 44, Public Printing and Documents, and repealing provisions set out as a note under section 648 of this title] may be cited as the 'Small Business Administration Reauthorization and Amendments Act of 1990'.''

Pub. L. 101–574, title III, § 301, Nov. 15, 1990, 104 Stat. 2827, provided that: ''This title [enacting sections 653 and 654 of this title, amending sections 631b, 636, and 648 of this title, and enacting provisions set out as notes under section 653 of this title and section 601 of Title 5, Government Organization and Employees] may be cited as the 'Rural Small Business Enhancement Act of 1990'.''

SHORT TITLE OF 1989 AMENDMENT

Section 1 of Pub. L. 101–37 provided that: ''This Act [amending this section and sections 633, 636, 637, 639, and 644 of this title, enacting provisions set out as a note under this section, and amending provisions set out as notes under this section and sections 633, 636, 637, and 644 of this title] may be cited as the 'Business Opportunity Development Reform Act Technical Corrections Act'.''

SHORT TITLE OF 1988 AMENDMENTS

Section 1(a) of Pub. L. 100–656 provided that: ''This Act [amending this section, sections 632, 633, 636, 637, 639, 644, and 645 of this title, and section 541 of former Title 40, Public Buildings, Property, and Works, enacting provisions set out as notes under this section and sections 632, 633, 636, and 637 of this title, and amending provisions set out as a note under section 644 of this title] may be cited as the 'Business Opportunity Development Reform Act of 1988'.''

Section 1(a) of Pub. L. 100–590 provided that: ''This Act [enacting sections 687m and 697c of this title, amending this section and sections 631b, 632, 633, 634, 636, 637, 638, 644, 648, 681, 687b, and 694b to 697b of this title, repealing section 694 of this title, enacting provisions set out as notes under this section and sections 636, 637, 639, 644, 661, 694, 694b, and 697 of this title, and amending provisions set out as notes under this section and sections 633 and 637 of this title] may be cited as the 'Small Business Administration Reauthorization and Amendment Act of 1988'.''

Pub. L. 100–533, § 1, Oct. 25, 1988, 102 Stat. 2689, provided in part that Pub. L. 100–533 ''[enacting chapter 97 of this title and section 417a of Title 41, Public Contracts, amending this section and sections 631b, 636, 637, and 1691b of this title, and enacting provisions set out as notes under this section, sections 636 and 637 of this title, and section 131 of Title 13, Census] may be cited as the 'Women's Business Ownership Act of 1988'.''

Section 8001 of title VIII of Pub. L. 100–418 provided that: ''This title [amending this section and sections 636, 648, 649, and 696 of this title, enacting provisions set out as notes under this section, and amending provisions set out as notes under this section and section 638 of this title] may be cited as the 'Small Business International Trade and Competitiveness Act'.''

SHORT TITLE OF 1984 AMENDMENTS

Pub. L. 98–395, § 1, Aug. 21, 1984, 98 Stat. 1366, provided that: ''This Act [amending sections 636 and 648 of this title and provisions set out as notes under this section and section 648 of this title] may be cited as the 'Small Business Development Center Improvement Act of 1984'.''

Pub. L. 98–362, § 1, July 16, 1984, 98 Stat. 431, provided that: ''This Act [amending sections 632, 633, and 637 of this title and enacting provisions set out as notes under sections 633 and 637 of this title] may be cited as the 'Small Business Computer Security and Education Act of 1984'.''

Pub. L. 98–352, § 1, July 10, 1984, 98 Stat. 329, provided that: ''This Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under section 634 of this title] may be cited as the 'Small Business Secondary Market Improvements Act of 1984'.''

SHORT TITLE OF 1982 AMENDMENT

Section 1 of Pub. L. 97–219 provided that: ''This Act [amending section 638 of this title and enacting provisions set out as notes under section 638 of this title] may be cited as the 'Small Business Innovation Development Act of 1982'.''

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–35, title XIX, § 1901, Aug. 13, 1981, 95 Stat. 767, provided that: ''This title [amending sections 632, 633, 636, 639, and 696 of this title, repealing section 636a of this title, enacting provisions set out as notes under sections 632 and 636 of this title, and amending provisions set out as notes under this section] may be cited as the 'Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981'.''

SHORT TITLE OF 1980 AMENDMENTS

Pub. L. 96–481, title I, § 110, Oct. 21, 1980, 94 Stat. 2323, provided that: ''This part [part B (§§ 110–113) of title I of Pub. L. 96–481 enacting section 649 of this title, amend-

ing section 636 of this title and enacting provisions set out as notes under section 649 of this title] may be cited as the 'Small Business Export Expansion Act of 1980'.''

Section 201 of title II of Pub. L. 96–302 provided that: ''This title [enacting section 648, amending section 636, and enacting provisions set out as a note under section 648 of this title] may be cited as the 'Small Business Development Center Act of 1980'.''

Section 301 of title III of Pub. L. 96–302 provided that: ''This title [enacting sections 631a and 631b of this title] may be cited as the 'Small Business Economic Policy Act of 1980'.''

Section 501 of title V of Pub. L. 96–302 provided that: ''This title [amending sections 632 and 636 of this title and enacting provisions set out as notes under sections 631 and 636 of this title] may be cited as the 'Small Business Employee Ownership Act of 1980'.''

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95–315, §1, July 4, 1978, 92 Stat. 377, provided: ''That this Act [amending sections 633, 636, and 639 of this title and provisions set out as notes under this section] may be cited as the 'Small Business Energy Loan Act'.''

SHORT TITLE OF 1974 AMENDMENT

Section 1 of Pub. L. 93–386 provided: ''That this Act [enacting section 694c of this title, amending this section, sections 633, 634, 636, 639, 647, 694, and 694b of this title, and sections 2855, 2942, 2949, and 2982 of Title 42, The Public Health and Welfare, repealing sections 2901, 2902, 2905, 2906, 2906a, 2906b, 2906c, and 2907 of Title 42, and enacting provisions set out as notes under sections 633 and 694 of this title] may be cited as the 'Small Business Amendments of 1974'.''

SHORT TITLE OF 1967 AMENDMENT

Section 101 of Pub. L. 90–104, title I, Oct. 11, 1967, 81 Stat. 268, provided that: ''This title [amending sections 633, 636, and 637 of this title and section 2902 of Title 42, The Public Health and Welfare] may be cited as the 'Small Business Act Amendments of 1967'.''

SHORT TITLE OF 1961 AMENDMENT

Section 1 of Pub. L. 87–305 provided: ''That this Act [amending this section, sections 633, 634, 636, 637, and 639 of this title, and section 2158 of Appendix to Title 50, War and National Defense] may be cited as the 'Small Business Act Amendments of 1961'.''

SHORT TITLE

Section 2[1] of Pub. L. 85–536 provided that this chapter should be known as the ''Small Business Act''.

REPEAL OF INCONSISTENT LAWS

Section 2[37], formerly section 2[21], of Pub. L. 85–536, renumbered §2[30] by Pub. L. 96–302, title II, §202, July 2, 1980, 94 Stat. 843; renumbered §2[31] by Pub. L. 104–121, title II, §222(1), Mar. 29, 1996, 110 Stat. 860; renumbered §2[32] by Pub. L. 105–135, title VI, §602(b)(1)(A), Dec. 2, 1997, 111 Stat. 2629; renumbered §2[34] by Pub. L. 106–50, title II, §201(b)(1), Aug. 17, 1999, 113 Stat. 235; renumbered §2[36] by Pub. L. 106–554, §1(a)(9) [title I, §111(b)(1)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674; renumbered §2[37] by Pub. L. 108–183, title III, §308, Dec. 16, 2003, 117 Stat. 2662, provided that: ''All laws and parts of laws inconsistent with this Act [this chapter] are hereby repealed to the extent of such inconsistency.''

REGULATIONS

Section 417 of title IV of Pub. L. 105–135 provided that:

''(a) PROPOSED REGULATIONS.—Proposed amendments to the Federal Acquisition Regulation or proposed Small Business Administration regulations under this subtitle [subtitle B (§§411–417) of title IV of Pub. L. 105–135, amending this section and sections 632, 637 and 644 of this title and enacting provisions set out as notes under section 637 of this title and section 405 of Title 41, Public Contracts] and the amendments made by this subtitle shall be published not later than 120 days after the date of enactment of this Act [Dec. 2, 1997] for the purpose of obtaining public comment pursuant to section 22 of the Office of Federal Procurement Policy Act (41 U.S.C. 418b), or chapter 5 of title 5, United States Code, as appropriate. The public shall be afforded not less than 60 days to submit comments.

''(b) FINAL REGULATIONS.—Final regulations shall be published not later than 270 days after the date of enactment of this Act. The effective date for such final regulations shall be not less than 30 days after the date of publication.''

Section 136 of title I of Pub. L. 100–590 provided that: ''Notwithstanding any law, rule or regulation, the Small Business Administration shall promulgate final regulations to be effective on publication to carry out the provisions of this title [see Effective Date of 1988 Amendments note above] within six months after the date of enactment [Nov. 3, 1988].''

Section 8013 of title VIII of Pub. L. 100–418 provided that: ''Notwithstanding any law, rule, or regulation, the Small Business Administration shall promulgate final regulations to carry out the provisions of this title [see Short Title of 1988 Amendments note above] within six months after the date of enactment of this title [Aug. 23, 1988].''

SEPARABILITY

Section 2[19] of Pub. L. 85–536 provided that: ''If any provision of this Act [this chapter], or the application thereof to any person or circumstances, is held invalid, the remainder of this Act [this chapter], and the application of such provision to other persons or circumstances, shall not be affected thereby.''

AUTHORIZATION OF APPROPRIATIONS

Pub. L. 85–536, §2[20], July 18, 1958, 72 Stat. 396, as amended by Pub. L. 87–341, §11(h)(2), Oct. 3, 1961, 75 Stat. 757; Pub. L. 95–89, title I, §102, Aug. 4, 1977, 91 Stat. 553; Pub. L. 95–315, §§5, 7, July 4, 1978, 92 Stat. 379; Pub. L. 96–302, title I, §§101, 110, July 2, 1980, 94 Stat. 833, 837; Pub. L. 97–35, title XIX, §§1905, 1906, Aug. 13, 1981, 95 Stat. 772–777; Pub. L. 98–270, title III, §§302, 305, Apr. 18, 1984, 98 Stat. 160, 161; Pub. L. 98–395, §3, Aug. 21, 1984, 98 Stat. 1367; Pub. L. 99–272, title XVIII, §§18001, 18002, 18012, Apr. 7, 1986, 100 Stat. 361, 363, 369; Pub. L. 100–72, §1, July 11, 1987, 101 Stat. 477; Pub. L. 100–418, title VIII, §§8004, 8006(a), Aug. 23, 1988, 102 Stat. 1556, 1557; Pub. L. 100–590, title I, §§101, 135(1), (2), Nov. 3, 1988, 102 Stat. 2990, 3007; Pub. L. 101–574, title I, §§101, 102, Nov. 15, 1990, 104 Stat. 2815, 2817; Pub. L. 102–83, §5(c)(2), Aug. 6, 1991, 105 Stat. 406; Pub. L. 102–366, title I, §§102, 115(a), title IV, §§405, 414, Sept. 4, 1992, 106 Stat. 987, 993, 1014, 1018; Pub. L. 103–81, §2, Aug. 13, 1993, 107 Stat. 780; Pub. L. 103–282, §1, July 22, 1994, 108 Stat. 1422; Pub. L. 103–403, title I, §101, Oct. 22, 1994, 108 Stat. 4176; Pub. L. 104–208, div. D, title II, §208(i)(2), Sept. 30, 1996, 110 Stat. 3009–747; Pub. L. 105–135, title I, §101, title II, §211, title VI, §607, Dec. 2, 1997, 111 Stat. 2594, 2600, 2635; Pub. L. 106–9, §2(b), Apr. 5, 1999, 113 Stat. 17; Pub. L. 106–24, §1(b), Apr. 27, 1999, 113 Stat. 39; Pub. L. 106–554, §1(a)(8) [§1(c)], §1(a)(9) [title V, §502, title VIII, §804(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–664, 2763A–691, 2763A–703; Pub. L. 107–20, title II, §2203(a), July 24, 2001, 115 Stat. 170; Pub. L. 108–217, §3, Apr. 5, 2004, 118 Stat. 591; Pub. L. 108–447, div. K, title I, §121, Dec. 8, 2004, 118 Stat. 3446, provided that:

''(a)(1) For fiscal year 2000 and each fiscal year thereafter, there are authorized to be appropriated such sums as may be necessary and appropriate, to remain available until expended, and to be available solely—

''(A) to carry out the Small Business Development Center Program under section 21 [section 648 of this title], but not to exceed the annual funding level, as specified in section 21(a);

''(B) to pay the expenses of the National Small Business Development Center Advisory Board, as provided in section 21(i);

''(C) to pay the expenses of the information sharing system, as provided in section 21(c)(8);

''(D) to pay the expenses of the association referred to in section 21(a)(3)(A) for conducting the accreditation program, as provided in section 21(k)(2);

''(E) to pay the expenses of the Administration, including salaries of examiners, for conducting examinations as part of the accreditation program conducted by the association referred to in section 21(a)(3)(A); and

''(F) to pay for small business development center grants as mandated or directed by Congress.

''(2) Notwithstanding any other provision of law, the Administration 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 this Act [this chapter] and the Small Business Investment Act of 1958 [chapter 14B of this title], in the full amounts provided by law subject only to (A) the availability of qualified applications, and (B) limitations contained in appropriations Acts. Nothing in this paragraph authorizes the Administration to reduce or limit its authority to enter into such commitments. Subject to approval in appropriations Acts, amounts authorized for preferred securities, debentures or participating securities under title III of the Small Business Investment Act of 1958 [subchapter III of chapter 14B of this title] may be obligated in one fiscal year and disbursed or guaranteed in any 1 or more of the 4 subsequent fiscal years.

''(3) There are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for administrative expenses of the Administration.

''(4) Except as may be otherwise specifically provided by law, the amount of deferred participation loans authorized in this section—

''(A) shall mean the net amount of the loan principal guaranteed by the Small Business Administration (and does not include any amount which is not guaranteed); and

''(B) shall be available for a national program, except that the Administration 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.

''(b) There are authorized to be appropriated to the Administration for fiscal year 1991 such sums as may be necessary to carry out the provisions of this Act [this chapter] and the Small Business Investment Act of 1958 [chapter 14B of this title]. There also are hereby authorized to be appropriated such sums as may be necessary and appropriate for the carrying out of the provisions and purposes, including administrative expenses, of sections 7(b)(1) and 7(b)(2) of this Act [section 636(b)(1), (2) of this title]; and there are authorized to be transferred from the disaster loan revolving fund such sums as may be necessary and appropriate for such administrative expenses.

''(c) DISASTER MITIGATION PILOT PROGRAM.—The following program levels are authorized for loans under section 7(b)(1)(C) [section 636(b)(1)(C) of this title]:

''(1) $15,000,000 for fiscal year 2005.

''(2) $15,000,000 for fiscal year 2006.

''(d) FISCAL YEAR 2005.—

''(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2005:

''(A) For the programs authorized by this Act [this chapter], the Administration is authorized to make—

''(i) $75,000,000 in technical assistance grants, as provided in section 7(m) [section 636(m) of this title]; and

''(ii) $105,000,000 in direct loans, as provided in 7(m).

''(B) For the programs authorized by this Act, the Administration is authorized to make $23,050,000,000 in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

''(i) $16,500,000,000 in general business loans, as provided in section 7(a) [section 636(a) of this title];

''(ii) $6,000,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958 [section 697a of this title];

''(iii) $500,000,000 in loans, as provided in section 7(a)(21); and

''(iv) $50,000,000 in loans, as provided in section 7(m).

''(C) For the programs authorized by title III of the Small Business Investment Act of 1958 [subchapter III of chapter 14B of this title], the Administration is authorized to make—

''(i) $4,250,000,000 in purchases of participating securities; and

''(ii) $3,250,000,000 in guarantees of debentures.

''(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958 [part B of subchapter IV–A of chapter 14B of this title], the Administration is authorized to enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act [section 694b(a)(3) of this title].

''(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of $7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1) [section 637(b)(1) of this title].

''(2) ADDITIONAL AUTHORIZATIONS.—

''(A) There are authorized to be appropriated to the Administration for fiscal year 2005 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b) [section 636(b) of this title], and to carry out the Small Business Investment Act of 1958 [chapter 14B of this title], including salaries and expenses of the Administration.

''(B) Notwithstanding any other provision of this paragraph, for fiscal year 2005—

''(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

''(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $2,000,000.

''(e) FISCAL YEAR 2006.—

''(1) PROGRAM LEVELS.—The following program levels are authorized for fiscal year 2006:

''(A) For the programs authorized by this Act [this chapter], the Administration is authorized to make—

''(i) $80,000,000 in technical assistance grants, as provided in section 7(m) [section 636(m) of this title]; and

''(ii) $110,000,000 in direct loans, as provided in 7(m).

''(B) For the programs authorized by this Act, the Administration is authorized to make $25,050,000,000

in deferred participation loans and other financings. Of such sum, the Administration is authorized to make—

''(i) $17,000,000,000 in general business loans, as provided in section 7(a) [section 636(a) of this title];

''(ii) $7,500,000,000 in certified development company financings, as provided in section 7(a)(13) and as provided in section 504 of the Small Business Investment Act of 1958 [section 697a of this title];

''(iii) $500,000,000 in loans, as provided in section 7(a)(21); and

''(iv) $50,000,000 in loans, as provided in section 7(m).

''(C) For the programs authorized by title III of the Small Business Investment Act of 1958 [subchapter III of chapter 14B of this title], the Administration is authorized to make—

''(i) $4,500,000,000 in purchases of participating securities; and

''(ii) $3,500,000,000 in guarantees of debentures.

''(D) For the programs authorized by part B of title IV of the Small Business Investment Act of 1958 [part B of subchapter IV–A of chapter 14B of this title], the Administration is authorized to enter into guarantees not to exceed $6,000,000,000, of which not more than 50 percent may be in bonds approved pursuant to section 411(a)(3) of that Act [section 694b(a)(3) of this title].

''(E) The Administration is authorized to make grants or enter into cooperative agreements for a total amount of $7,000,000 for the Service Corps of Retired Executives program authorized by section 8(b)(1) [section 637(b)(1) of this title].

''(2) ADDITIONAL AUTHORIZATIONS.—

''(A) There are authorized to be appropriated to the Administration for fiscal year 2006 such sums as may be necessary to carry out the provisions of this Act not elsewhere provided for, including administrative expenses and necessary loan capital for disaster loans pursuant to section 7(b) [section 636(b) of this title], and to carry out the Small Business Investment Act of 1958 [chapter 14B of this title], including salaries and expenses of the Administration.

''(B) Notwithstanding any other provision of this paragraph, for fiscal year 2006—

''(i) no funds are authorized to be used as loan capital for the loan program authorized by section 7(a)(21) except by transfer from another Federal department or agency to the Administration, unless the program level authorized for general business loans under paragraph (1)(B)(i) is fully funded; and

''(ii) the Administration may not approve loans on its own behalf or on behalf of any other Federal department or agency, by contract or otherwise, under terms and conditions other than those specifically authorized under this Act or the Small Business Investment Act of 1958, except that it may approve loans under section 7(a)(21) of this Act in gross amounts of not more than $2,000,000.

''[(f) to (i) Repealed. Pub. L. 108–447, div. K, title I, §121(2), Dec. 8, 2004, 118 Stat. 3446.]

''(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.''

LOAN APPLICATION PROCESSING

Pub. L. 106–554, §1(a)(9) [title VIII, §801], Dec. 21, 2000, 114 Stat. 2763, 2763A–702, provided that:

''(a) STUDY.—The Administrator of the Small Business Administration shall conduct a study to determine the average time that the Administration requires to process an application for each type of loan or loan guarantee made under the Small Business Act (15 U.S.C. 631 et seq.).

''(b) TRANSMITTAL.—Not later than 1 year after the date of the enactment of this Act [Dec. 21, 2000], the Administrator shall transmit to Congress the results of the study conducted under subsection (a).''

SERVICE DISABLED VETERANS

Sections 701 to 704, 707, and 709 of title VII of Pub. L. 105–135 provided that:

''SEC. 701. PURPOSES.

''The purposes of this title [amending sections 631b, 636, and 637 of this title and enacting this note] are—

''(1) to foster enhanced entrepreneurship among eligible veterans by providing increased opportunities;

''(2) to vigorously promote the legitimate interests of small business concerns owned and controlled by eligible veterans; and

''(3) to ensure that those concerns receive fair consideration in purchases made by the Federal Government.

''SEC. 702. DEFINITIONS.

''In this title:

''(1) ELIGIBLE VETERAN.—The term 'eligible veteran' means a disabled veteran (as defined in section 4211(3) of title 38, United States Code).

''(2) SMALL BUSINESS CONCERN OWNED AND CONTROLLED BY ELIGIBLE VETERANS.—The term 'small business concern owned and controlled by eligible veterans' means a small business concern (as defined in section 3 of the Small Business Act [15 U.S.C. 632])—

''(A) that is at least 51 percent owned by 1 or more eligible veterans, or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by 1 or more eligible veterans; and

''(B) whose management and daily business operations are controlled by eligible veterans.

''SEC. 703. REPORT BY SMALL BUSINESS ADMINISTRATION.

''(a) STUDY AND REPORT.—

''(1) IN GENERAL.—Not later than 9 months after the date of enactment of this Act [Dec. 2, 1997], the Administrator shall conduct a comprehensive study and submit to the Committees a final report containing findings and recommendations of the Administrator on—

''(A) the needs of small business concerns owned and controlled by eligible veterans;

''(B) the availability and utilization of Administration programs by small business concerns owned and controlled by eligible veterans;

''(C) the percentage, and dollar value, of Federal contracts awarded to small business concerns owned and controlled by eligible veterans in the preceding 5 fiscal years; and

''(D) methods to improve Administration and other agency programs to serve the needs of small business concerns owned and controlled by eligible veterans.

''(2) CONTENTS.—The report under paragraph (1) shall include recommendations to Congress concerning the need for legislation and recommendations to the Office of Management and Budget, relevant offices within the Administration, and the Department of Veterans Affairs.

''(b) CONDUCT OF STUDY.—In carrying out subsection (a), the Administrator—

''(1) may conduct surveys of small business concerns owned and controlled by eligible veterans and service disabled veterans, including those who have sought financial assistance or other services from the Administration;

''(2) shall consult with the appropriate committees of Congress, relevant groups and organizations in the nonprofit sector, and Federal or State government agencies; and

''(3) shall have access to any information within other Federal agencies that pertains to such veterans and their small businesses, unless such access is specifically prohibited by law.

''SEC. 704. INFORMATION COLLECTION.

''After the date of issuance of the report required by section 703(a), the Secretary of Veterans Affairs shall, in consultation with the Assistant Secretary for Veterans' Employment and Training and the Administrator, engage in efforts each fiscal year to identify small business concerns owned and controlled by eligible veterans in the United States. The Secretary shall inform each small business concern identified under this section that information on Federal procurement is available from the Administrator.

''SEC. 707. ENTREPRENEURIAL TRAINING, COUNSELING, AND MANAGEMENT ASSISTANCE.

''The Administrator shall take such actions as may be necessary to ensure that small business concerns owned and controlled by eligible veterans have access to programs established under the Small Business Act [15 U.S.C. 631 et seq.] 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 Service Corps of Retired Executives (SCORE) program.

''SEC. 709. OUTREACH FOR ELIGIBLE VETERANS.

''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 eligible veterans, which program shall include business training and management assistance, employment and relocation counseling, and dissemination of information on veterans' benefits and veterans' entitlements.''

TRANSITION REIMBURSEMENT

Pub. L. 103–403, title IV, § 414, Oct. 22, 1994, 108 Stat. 4197, authorized payment, for a 90-day period of time, of reasonable amounts of funds to pay salaries and expenses of members and staff of the National Women's Business Council appointed on or before Oct. 22, 1994.

BUY AMERICAN PREFERENCE IN PROVISION OF FINANCIAL ASSISTANCE

Pub. L. 102–366, title I, § 103, Sept. 4, 1992, 106 Stat. 988, provided that: ''In providing financial assistance with amounts appropriated pursuant to the amendments made by this Act [see Short Title of 1992 Amendment note above], the Administrator of the Small Business Administration shall, when practicable, accord preference to small business concerns which use or purchase equipment and supplies produced in the United States. The Administrator shall also encourage small business concerns receiving such assistance to purchase such equipment and supplies.''

NATIONAL SEMINAR ON SMALL BUSINESS EXPORTS

Pub. L. 102–366, title II, § 224, Sept. 4, 1992, 106 Stat. 1000, directed Small Business Administration to conduct a National Seminar on Small Business Exports in Buffalo, New York, in connection with the World University Games Buffalo '93 during July, 1993, in order to develop recommendations designed to stimulate exports from small companies, with such Seminar to build upon the information collected by Administration through previously conducted regional small business trade conferences and prior conference in State of Washington and to specifically consider utility of, and make recommendations regarding, subsequent International Conference on Small Business and Trade.

FEASIBILITY STUDY OF BUSINESS COOPERATION NETWORK

Pub. L. 101–574, title II, § 233, Nov. 15, 1990, 104 Stat. 2825, directed Administrator of the Small Business Administration to conduct a study of feasibility of establishing a business cooperation system similar to Business Cooperation Network developed by the European Economic Community, specified the purpose of the study, and directed Administrator, not later than one year after Nov. 15, 1990, to transmit to Congress a report containing the results of the study together with recommendations for such legislative and administrative actions as the Administrator considered appropriate.

DEVELOPMENT OF WOMEN'S BUSINESS ENTERPRISE

Title IV of Pub. L. 100–533, Oct. 25, 1988, 102 Stat. 2694, as amended, formerly set out as a note under this section, was transferred to chapter 97 (§ 7101 et seq.) of this title.

DISADVANTAGED SMALL BUSINESSES

Section 504 of Pub. L. 100–533 provided that: ''Nothing contained in this Act [see Short Title of 1988 Amendment note above] is intended to reduce or limit any programs, benefit, or activity that is authorized by law to assist small business concerns owned and controlled by socially and economically disadvantaged individuals as defined pursuant to section 8(d)(3) of the Small Business Act (15 U.S.C. 637(d)(3)).''

GLOBALIZATION OF PRODUCTION; REPORT TO CONGRESS

Section 8009 of Pub. L. 100–418 directed Administrator of Small Business Administration, within one year after Aug. 23, 1988, to submit a written report to Committees on Small Business of House of Representatives and Senate, prepared by Administration in conjunction with Bureau of Census and in cooperation with other relevant agencies, that would analyze to extent possible the effect of increased outsourcing and other shifts in production arrangements on small firms, particularly manufacturing firms, within United States subcontractor tier and to extent that such data is not available determine methods by which such data might be collected; assess the impact of specific economic policies, including, but not limited to, procurement, tax and trade policies, in facilitating outsourcing and other international production arrangements; and make recommendations as to changes in Government policy that would improve competitive position of smaller United States subcontractors, including recommendations as to incentives which could be provided to larger corporations to maximize their use of United States subcontractors and assist these subcontractors in changing production and marketing strategies and in obtaining new business in domestic and foreign markets.

NATIONAL SEMINAR ON SMALL BUSINESS EXPORTS

Section 8011 of Pub. L. 100–418 directed Small Business Administration to conduct a National Seminar on Small Business Exports within one year after Aug. 23, 1988, in order to develop recommendations designed to stimulate exports from small companies.

APPOINTMENT OF ADMINISTRATOR OF SMALL BUSINESS ADMINISTRATION TO TRADE POLICY COMMITTEE; SPECIAL TRADE ASSISTANT FOR SMALL BUSINESS IN OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Section 8012 of Pub. L. 100–418 provided that:

''It is the sense of the Congress that the interests of the small business community have not been adequately represented in trade policy formulation and in trade negotiations. Therefore, it is the sense of the Congress that the Administrator of the Small Business Administration should be appointed as a member of the Trade Policy Committee and that the United States Trade Representative should consult with the Small Business Administration and its Office of Advocacy in trade policy formulation and in trade negotiations.

''Further, it is the sense of the Congress that the United States Trade Representative would better serve the needs of the small business community with full-

time staff assistance with responsibilities for small business trade issues.

''Further, it is the sense of the Congress that the United States Trade Representative should appoint a special trade assistant for small business.''

WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Pub. L. 101–409, Oct. 5, 1990, 104 Stat. 885, as amended by Pub. L. 103–81, §10, Aug. 13, 1993, 107 Stat. 783, directed President to conduct National White House Conference on Small Business not earlier than May 1, 1995, and not later than Sept. 30, 1995, to increase public awareness of essential contribution of small business, to identify obstacles to small business, to examine status of women and minorities as small business owners, and to develop specific recommendations for action to maintain and encourage economic viability of small business, further provided for creation of White House Conference on Small Business Commission to oversee preparation for Conference, further provided for selection of Conference participants as well as planning and administration of Conference, further provided for final report to be submitted not later than four months after convening of Conference as well as annual follow-up reports by Small Business Administration for three years after submission of final report, and further provided for authorization of appropriations.

Pub. L. 98–276, May 8, 1984, 98 Stat. 169, directed President to call and conduct a National White House Conference on Small Business not later than Sept. 1, 1986, with Conference to submit a final report to President and Congress not more than six months from date on which Conference convened, and with that final report to include finding and recommendations of Conference as well as proposals for any legislative action necessary to implement Conference's recommendations; and required Small Business Administration to report to Congress annually during the 3-year period following submission of final report on status and implementation of findings and recommendations of Conference.

ASIAN PACIFIC AMERICANS AS DISADVANTAGED MINORITY IN 1978

Section 118(c)(1) of Pub. L. 96–302 provided that 1980 Amendment of subsec. (e)(1)(C) by Pub. L. 96–302, §118(a), which included Asian Pacific Americans among the disadvantaged minorities, shall apply as if included in the 1978 Amendment made by Pub. L. 95–507, §201, enacting subsec. (e) of this section.

ASSISTANCE TO AUTOMOBILE DEALERS; CONGRESSIONAL FINDINGS; INVESTIGATION BY ADMINISTRATOR; REPORT TO CONGRESS

Pub. L. 96–185, §17, Jan. 7, 1980, 93 Stat. 1335, directed Administrator of Small Business Administration to investigate financial problems faced by small automobile dealers and determine what assistance through loans and loan guarantees may be needed to alleviate such problems and to report results of such investigation to Senate and House of Representatives not later than sixty days after Jan. 7, 1980.

EXECUTIVE ORDER NO. 11458

Ex. Ord. No. 11458, Mar. 5, 1969, 34 F.R. 4937, which related to a national program for minority business enterprise, was superseded by Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, set out below.

EX. ORD. NO. 11625. NATIONAL PROGRAM FOR MINORITY BUSINESS ENTERPRISE

Ex. Ord. No. 11625, Oct. 13, 1971, 36 F.R. 19967, as amended by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

The opportunity for full participation in our free enterprise system by socially and economically disadvantaged persons is essential if we are to obtain social and economic justice for such persons and improve the functioning of our national economy.

The Office of Minority Business Enterprise, established in 1969, greatly facilitated the strengthening and expansion of our minority enterprise program. In order to take full advantage of resources and opportunities in the minority enterprise field, we now must build on this foundation. One important way of improving our efforts is by clarifying the authority of the Secretary of Commerce (a) to implement Federal policy in support of the minority business enterprise program; (b) provide additional technical and management assistance to disadvantaged business; (c) to assist in demonstration projects; and (d) to coordinate the participation of all Federal departments and agencies in an increased minority enterprise effort.

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

SECTION 1. *Functions of the Secretary of Commerce.* (a) The Secretary of Commerce (hereinafter referred to as ''the Secretary'') shall—

(1) Coordinate as consistent with law the plans, programs, and operations of the Federal Government which affect or may contribute to the establishment, preservation, and strengthening of minority business enterprise.

(2) Promote the mobilization of activities and resources of State and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of minority business enterprises, and facilitate the coordination of the efforts of these groups with those of Federal departments and agencies.

(3) Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the Nation in undertaking or promoting the establishment and successful operation of minority business enterprise.

(4) Within constraints of law and appropriations therefor, and according to his discretion, provide financial assistance to public and private organizations so that they may render technical and management assistance to minority business enterprises, and defray all or part of the costs of pilot or demonstration projects conducted by public or private agencies or organizations which are designed to overcome the special problems of minority business enterprises or otherwise to further the purposes of this order.

(b) The Secretary, as he deems necessary or appropriate to enable him to better fulfill the responsibilities vested in him by subsection (a), may—

(1) With the participation of other Federal departments and agencies as appropriate, develop comprehensive plans and specific program goals for the minority enterprise program; establish regular performance monitoring and reporting systems to assure that goals are being achieved; and evaluate the impact of Federal support in achieving the objectives established by this order.

(2) Require a coordinated review of all proposed Federal training and technical assistance activities in direct support of the minority enterprise program to assure consistency with program goals and to avoid duplication.

(3) Convene, for purposes of coordination, meetings of the heads of such departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this order.

(4) Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of minority business enterprise or who could contribute to its development, for the purpose of proposing, evaluating and coordinating governmental and private activities in furtherance of the objectives of this order.

(5) Confer with and advise officials of State and local governments.

(6) Provide the managerial and organizational framework through which joint or collaborative undertakings with Federal departments or agencies or private organizations can be planned and implemented.

(7) Recommend appropriate legislative or executive actions.

SEC. 2. [Revoked by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839.]

SEC. 3. *Responsibilities of Other Federal Departments and Agencies*. (a) The head of each Federal department and agency, or a representative designated by him, when and in the manner so requested by the Secretary, shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Secretary in the performance of his functions hereunder.

(b) The head of each Federal department or agency shall, when so requested by the Secretary, designate his Under Secretary or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning minority business enterprise.

(c) The officials designated under the preceding paragraph, when so requested, shall review and report to the Secretary upon the policies and programs of the minority business enterprise program, and shall keep the Secretary informed of all proposed budgets, plans and programs of his department or agency affecting minority business enterprise.

(d) The head of each Federal department or agency, or a representative designated by him, shall, to the extent provided under regulations issued by the Secretary after consultation with the official designated in paragraph (b) above, report to the Secretary on any activity that falls within the scope of the minority business enterprise program as defined herein and in those regulations.

(e) Each Federal department or agency shall, within constraints of law and appropriations therefor, continue all current efforts to foster and promote minority business enterprises and to support the program herein set forth, and shall cooperate with the Secretary of Commerce in increasing the total Federal effort.

SEC. 4. *Reports*. The Secretary shall, not later than 120 days after the close of each fiscal year, submit to the President a full report of his activities hereunder during the previous fiscal year. Further, the Secretary shall, from time to time, submit to the President his recommendations for legislation or other action as he deems desirable to promote the purposes of this order. Each Federal department or agency shall report to the Secretary as hereinabove provided on a timely basis so that the Secretary may consider such reports for his report and recommendations to the President. Each Federal department or agency shall develop and implement systematic data collection processes which will provide to the Office of Minority Business Enterprise Information Center current data helpful in evaluating and promoting the efforts herein described.

SEC. 5. *Policies and Standards*. The Secretary may establish such policies, standards, definitions, criteria, and procedures to govern the implementation, interpretation, and application of this order, and generally perform such functions and take such steps as he may deem to be necessary or appropriate to achieve the purposes and carry out the provisions hereof.

SEC. 6. *Definitions*. For purposes of this order, the following definitions shall apply:

(a) ''Minority business enterprise'' means a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to, Negroes, Puerto Ricans, Spanish-speaking Americans, American Indians, Eskimos, and Aleuts.

(b) ''State'' means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

SEC. 7. *Construction*. Nothing in this order shall be construed as subjecting any function vested in, or assigned pursuant to law to, any Federal department or agency or head thereof to the authority of any other agent or office exclusively, or as abrogating or restricting any such function in any manner.

SEC. 8. *Prior Executive Order*. Executive Order No. 11458 of March 5, 1969, is hereby superseded.

ADVISORY COUNCIL FOR MINORITY ENTERPRISE

For provisions relating to termination of, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of the Federal Advisory Committee Act, set out in the Appendix to Title 5, Government Organization and Employees.

Term of the Advisory Council for Minority Enterprise extended until Dec. 31, 1978, see Ex. Ord. No. 11948, Dec. 20, 1976, 41 F.R. 55705, set out as a note under section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, Title 5, Appendix, Government Organization and Employees.

EXECUTIVE ORDER NO. 12061

Ex. Ord. No. 12061, May 18, 1978, 43 F.R. 21865, as amended by Ex. Ord. No. 12091, Nov. 1, 1978, 43 F.R. 51373, which related to the Small Business Conference Commission, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 12269

Ex. Ord. No. 12269, Jan. 15, 1981, 46 F.R. 4673, which established a seven member President's Committee on Small Business Policy to advise the President on appropriate responses to the recommendations of the White House Conference on Small Business, designated the Administrator of the Small Business Administration to perform the functions of the President under Federal advisory committee provisions, and terminated the Committee on Dec. 31, 1982, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EX. ORD. NO. 12432. MINORITY BUSINESS ENTERPRISE DEVELOPMENT

Ex. Ord. No. 12432, July 14, 1983, 48 F.R. 32551, provided:

By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, including Section 205(a) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(a)) [now 40 U.S.C. 121(a)], in order to provide guidance and oversight for programs for the development of minority business enterprise pursuant to my statement of December 17, 1982 concerning Minority Business Development; and to implement the commitment of the Federal government to the goal of encouraging greater economic opportunity for minority entrepreneurs, it is hereby ordered as follows:

SECTION 1. *Minority Business Development Plans*. (a) Minority business enterprise development plans shall be developed by each Federal agency having substantial procurement or grantmaking authority. Such agencies shall submit these plans to the Cabinet Council on Commerce and Trade on an annual basis.

(b) These annual plans shall establish minority enterprise development objectives for the participating agencies and methods for encouraging both prime contractors and grantees to utilize minority business enterprises. The plans shall, to the extent possible, build upon the programs administered by the Minority Business Development Agency and the Small Business Administration, including the goals established pursuant to Public Law 95–507 [see Tables for classification].

(c) The Secretary of Commerce and the Administrator of the Small Business Administration, in consultation with the Cabinet Council on Commerce and Trade, shall establish uniform guidelines for all Federal agencies to be utilized in establishing the minority business programs set forth in Section 2 of this Order.

(d) The participating agencies shall furnish an annual report regarding the implementation of their programs in such form as the Cabinet Council on Commerce and Trade may request, and at such time as the Secretary of Commerce shall designate.

(e) The Secretary of Commerce shall provide an annual report to the President, through the Cabinet Council on Commerce and Trade, on activities under this Order and agency implementation of minority business development programs.

SEC. 2. *Minority Business Development Responsibilities of Federal Agencies*. (a) To the extent permitted by law and consistent with its primary mission, each Federal agency which is required to develop a minority business development plan under Section 1 of this Order shall, to accomplish the objectives set forth in its plan, establish programs concerning provision of direct assistance, procurement assistance, and management and technical assistance to minority business enterprises.

(b) Each Federal agency shall, to the extent permitted by law and consistent with its primary mission, establish minority business development programs, consistent with Section 211 of Public Law 95–507 [amending 15 U.S.C. 637(d)] to develop and implement incentive techniques to encourage greater minority business subcontracting by Federal prime contractors.

(c) Each Federal agency shall encourage recipients of Federal grants and cooperative agreements to achieve a reasonable minority business participation in contracts let as a result of its grants and agreements. In cases where State and local governments are the recipients, such encouragement shall be consistent with principles of federalism.

(d) Each Federal agency shall provide the Cabinet Council on Commerce and Trade such information as it shall request from time to time concerning the agency's progress in implementing these programs.

RONALD REAGAN.

EX. ORD. NO. 12523. NATIONAL WHITE HOUSE CONFERENCE ON SMALL BUSINESS

Ex. Ord. No. 12523, June 27, 1985, 50 F.R. 26963, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to implement the White House Conference on Small Business Authorization Act (Public Law 98–276) [set out above] it is hereby ordered as follows:

Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act [5 U.S.C. App.] applicable to the White House Conference on Small Business Authorization Act, except that of reporting annually to the Congress, shall be performed by the Administrator of the Small Business Administration in accordance with the guidelines and procedures established by the Administrator of General Services.

RONALD REAGAN.

EX. ORD. NO. 12928. PROMOTING PROCUREMENT WITH SMALL BUSINESSES OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS, HISTORICALLY BLACK COLLEGES AND UNIVERSITIES, AND MINORITY INSTITUTIONS

Ex. Ord. No. 12928, Sept. 16, 1994, 59 F.R. 48377, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to enforce rigorously the letter and spirit of public laws that promote increased participation in Federal procurement by Small Businesses Owned and Controlled by Socially and Economically Disadvantaged Individuals (SDBs) as described in section 8 of the Small Business Act (15 U.S.C. 637), Historically Black Colleges and Universities (HBCUs) as described in 34 C.F.R. 608.2, and Minority Institutions (MIs) as referred to in sections 1046(3) and 316(b)(1) of the Higher Education Act of 1965, as amended (20 U.S.C. 1135d-5(3) and 1059c(b)(1), respectively), it is hereby ordered as follows:

SECTION 1. *Policy Statement*. It is the policy of the United States Government that all department and agency heads and all Federal employees involved in the procurement of any and all goods and services shall assist SDBs, HBCUs, and MIs, as applicable, to develop viable, self-sustaining businesses capable of competing on an equal basis in the mainstream of the American economy. To that end, all Federal personnel shall commit to the letter and spirit of all laws promoting the participation of SDBs, HBCUs, and MIs in Federal procurement. The laws promote:

(a) the award of contracts to SDBs, HBCUs, and MIs through the Small Business Administration Section 8(a) [15 U.S.C. 637(a)] Program, the Department of Defense Small and Disadvantaged Business Program, other agency programs, and through other specific statutory authority or appropriate means;

(b) the establishment of particular goals for SDBs, HBCUs, or MIs on an agency-by-agency basis and the requirement that prime contractors and other recipients of Federal funds attain similar goals in their procurement; and

(c) the establishment of other mechanisms that ensure that SDBs, HBCUs, and MIs have a fair opportunity to participate in Federal procurement.

SEC. 2. *Attainment of Goals*. All departments and agencies are required by law to establish participation goals of not less than 5 percent (15 U.S.C. 644(g)) or a greater percentage where otherwise required by law, as further provided in the Office of Federal Procurement Policy Letter No. 91–1 of March 11, 1991. Although the Federal Government has made substantial strides toward meeting established SDB, HBCU, and MI participation goals, certain departments and agencies have from time to time failed to aggressively pursue such goals. Department and agency heads are henceforth directed to execute, implement, and otherwise aggressively strive to fulfill the statutorily-mandated procurement participation goals. In addition, all departments and agencies are encouraged to set reasonable participation goals that exceed statutory requirements, to the extent permitted by law.

SEC. 3. *Subcontracting Plans*. The Small Business Act, (15 U.S.C. 637(d)) and other related laws require certain prime contractors to maximize the use of SDBs in subcontracting plans and strive to achieve stated goals through prime contractors' subcontracting practices. Department and agency heads are directed to aggressively enforce these prime contractors' obligations to maximize awards of subcontracts to eligible SDBs.

SEC. 4. *Office of Small and Disadvantaged Business Utilization (''OSDBU'')*.

(a) Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) establishes in each Federal department and agency an OSDBU and requires that the Director of the OSDBU ''be responsible only to, and report directly to, the head of such agency or to the deputy of such head'' (15 U.S.C. 644(k)(3)). To the extent not prohibited by law, each department and agency shall ensure that the aforementioned direct reporting requirements are henceforth vigorously enforced.

(b) Because of the importance of the OSDBU function, each department and agency shall also, to the extent not prohibited by law, comply with the Office of Federal Procurement Policy Letter No. 79–1 of March 7, 1979, which provides implementation guidance on section 15k [15(k)] and the organizational placement and functions of the OSDBU.

SEC. 5. *Anti-fraud Enforcement*. All department and agency heads shall ensure that in enforcing the laws and requirements mentioned in this order, Federal benefits or contracts intended for SDBs, HBCUs, and MIs are not awarded to entities that are not legitimate SDBs, HBCUs, and MIs. Department and agency anti-fraud enforcement, however, shall not diminish agency vigor in achieving the aforementioned participation goals, which exist to promote the development of legitimate SDBs, HBCUs, and MIs. Nothing herein is intended to change self-certification requirements.

SEC. 6. *Periodic Reports to the President*. The Administrator of the Small Business Administration and the Administrator of the Office of Federal Procurement Policy shall report to the President periodically on the progress of all departments and agencies in complying with the laws and requirements mentioned in this order.

SEC. 7. *Independent Agencies*. Independent agencies are requested to comply with the provisions of this order.

SEC. 8. This order shall be effective immediately.

WILLIAM J. CLINTON.

EX. ORD. NO. 13169. ASSISTANCE TO SMALL BUSINESS EXPORTERS AND DISLOCATED WORKERS

Ex. Ord. No. 13169, Oct. 6, 2000, 65 F.R. 60581, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631 *et seq.*, the Workforce Investment Act, 29 U.S.C. 2801 *et seq.*, and the Trade Act of 1974, 19 U.S.C. 2271 *et seq.* [19 U.S.C. 2101 et seq.], and in order to assist small businesses, including businesses headed by underserved populations, in participating in the export of products, and to expedite the delivery of adjustment assistance to dislocated workers, it is hereby ordered as follows:

SECTION 1. *Policy*. By its accession to the World Trade Organization, the People's Republic of China will be required to open its markets to a wide range of products and services provided by Americans. In addition, the United States has recently enacted a new law to facilitate trade with the countries of Sub-Saharan Africa and the Caribbean Basin. Federal agencies should take steps to assist small businesses, including businesses headed by underserved populations, in capitalizing on these new opportunities. The agencies should also take steps to assist workers who lose their jobs as a result of competition from imports in their efforts to secure adjustment assistance benefits for which they are eligible.

SEC. 2. *Interagency Task Force on Small Business Exports*. (a) The Secretaries of Commerce and Labor, the Administrator of the Small Business Administration, the United States Trade Representative, and the Chairman of the Export-Import Bank shall, within 60 days from the date of this order, establish an interagency task force through the Trade Promotion Coordinating Committee (TPCC). The task force shall facilitate exports by United States small businesses, including businesses headed by underserved populations, particularly with respect to the People's Republic of China and the countries of Sub-Saharan Africa and the Caribbean Basin. The TPCC shall submit an annual report to the President on the functions carried out by this task force during the preceding year. As part of its work, the task force shall assess the extent to which the establishment of permanent normal trade relations with the People's Republic of China, and the United States enactment of the African Growth and Opportunity Act, 19 U.S.C.A. 3701 *et seq.*, and the United States-Caribbean Basin Trade Partnership Act, 19 U.S.C.A. 2701 note, may contribute to the creation of export opportunities for small businesses including businesses headed by underserved populations.

(b) For the purposes of this order, ''businesses headed by underserved populations'' means businesses headed by women or minorities, and/or located in rural communities.

SEC. 3. *Expedited Response to Worker Dislocation*. (a) The Secretary of Labor shall expedite the Federal response to worker dislocation through the Workforce Investment Act and the Trade Adjustment Assistance program by proactively seeking information, from a variety of sources, on actual or prospective layoffs, including the media and community and labor union members, and by sharing such information with appropriate state workforce officials. In addition, the Department of Labor (Labor) shall undertake a number of proactive steps to support public outreach activities aimed at workers, employers, the media, local officials, the community, and labor organizations and their members to improve awareness of the adjustment assistance available through Labor programs, including, but not limited to:

(1) developing a set of methods to inform employers of the services available through Labor workforce programs, which will explain the requirements of the Worker Adjustment and Retraining Notification Act, 29 U.S.C. 2101 *et seq.*, and provide information on worker adjustment programs, including the Trade Adjustment Assistance and the basic dislocated worker programs, emphasizing the importance of early intervention to minimize the affects of work layoffs;

(2) improving websites and other modes of communication to provide basic information on dislocated worker and Trade Adjustment Assistance program contacts at the State and local level;

(3) developing a National Toll-Free Help Line to provide universal, accurate, and easy access to information about public workforce services to workers and employers;

(4) providing on-site technical assistance, in partnership with other Federal agencies, when there are layoffs or closures with multi-State impact, or when there are dislocations with significant community impact (such as areas that have been affected by numerous layoffs of apparel and textile workers);

(5) informing States directly when a secondary worker impact has been affirmed by Labor; and

(6) to the extent permitted by law, and subject to the availability of appropriations, providing funding or an outreach campaign for secondary workers (i.e., individuals indirectly affected by increased imports from other countries).

(b) The Secretary of Labor, in consultation with the Secretary of Commerce and the United States Trade Representative, shall report annually on the employment effects of the establishment of permanent normal trade relations with the People's Republic of China.

SEC. 4. *Judicial Review*. This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its officers, its employees, or any other person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13360. PROVIDING OPPORTUNITIES FOR SERVICE-DISABLED VETERAN BUSINESSES TO INCREASE THEIR FEDERAL CONTRACTING AND SUBCONTRACTING

Ex. Ord. No. 13360, Oct. 20, 2004, 69 F.R. 62549, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to strengthen opportunities in Federal contracting for service-disabled veteran businesses, it is hereby ordered as follows:

SECTION 1. *Policy*. America honors the extraordinary service rendered to the United States by veterans with disabilities incurred or aggravated in the line of duty during active service with the armed forces. Heads of agencies shall provide the opportunity for service-disabled veteran businesses to significantly increase the Federal contracting and subcontracting of such businesses. To achieve that objective, agencies shall more effectively implement section 15(g) of the Small Business Act (15 U.S.C. 644(g)), which provides that the President must establish a goal of not less than 3 percent for participation by service-disabled veteran businesses in Federal contracting, and section 36 of that Act (15 U.S.C. 657f), which gives agency contracting officers the authority to reserve certain procurements for service-disabled veteran businesses.

SEC. 2. *Duties of Agency Heads*. To implement the policy set forth in section 1, heads of agencies shall:

(a) develop a strategy to implement the policy set forth in section 1;

(b) make the agency's strategy publicly available and report annually to the Administrator of the Small Business Administration on implementation of the agency's strategy;

(c) designate a senior-level official who shall be responsible for developing and implementing the agency's strategy;

(d) include development and implementation of the agency's strategy and achievements in furtherance of the strategy as significant elements in any performance plans of the agency's designated agency senior-level official, chief acquisition officer, and director of small and disadvantaged business utilization; and

(e) include in the agency's strategy plans for:

(i) reserving agency contracts exclusively for service-disabled veteran businesses;

(ii) encouraging and facilitating participation by service-disabled veteran businesses in competitions for award of agency contracts;

(iii) encouraging agency contractors to subcontract with service-disabled veteran businesses and actively monitoring and evaluating agency contractors' efforts to do so;

(iv) training agency personnel on applicable law and policies relating to participation of service-disabled veteran businesses in Federal contracting; and

(v) disseminating information to service-disabled veteran businesses that would assist these businesses in participating in awards of agency contracts.

SEC. 3. *Additional Duties of Administrator of the Small Business Administration*. The Administrator of the Small Business Administration shall:

(a) designate an appropriate entity within the Small Business Administration that shall, in coordination with the Veterans Affairs' Center for Veterans Enterprise (CVE), provide to service-disabled veteran businesses information and assistance concerning participation in Federal contracting;

(b) advise and assist heads of agencies in their implementation of section 2 of this order; and

(c) make available to service-disabled veteran businesses training in Federal contracting law, procedures, and practices that would assist such businesses in participating in Federal contracting.

SEC. 4. *Additional Duties of Administrator of General Services*. The Administrator of General Services shall:

(a) establish a Government-wide Acquisition Contract reserved for participation by service-disabled veteran businesses; and

(b) assist service-disabled veteran businesses to be included in Federal Supply Schedules.

SEC. 5. *Additional Duties of the Secretary of Defense*. The Secretary of Defense shall direct the Defense Acquisition University (DAU) to develop training on contracting with service-disabled veteran businesses and make this training available on line through the DAU continuous learning program.

SEC. 6. *Additional Duties of the Secretary of Veterans Affairs*. The Secretary of Veterans Affairs shall assist agencies by making available services of the CVE and assist in verifying the accuracy of contractor registration databases with regard to service-disabled veteran businesses.

SEC. 7. *Additional Duties of the Secretary of Labor and Secretary of Veterans Affairs*. The Secretary of Labor and Secretary of Veterans Affairs shall, respectively, direct the Transition Assistance Program and the Disability Transition Assistance Program to educate separating service members as to the benefits available to service-disabled veteran businesses and as to potential entrepreneurial opportunities.

SEC. 8. *Definitions*. As used in this order:

(a) the term ''agency'' means an ''executive agency'' as that term is defined in section 105 of title 5, United States Code, excluding an executive agency that has fewer than 500 employees, the Government Accountability Office, or a Government corporation;

(b) the term ''service-disabled'' means, with respect to disability, that the disability was incurred or aggravated in the line of duty in the active service in the United States Armed Forces;

(c) the term ''service-disabled veteran'' means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16);

(d) the term ''service-disabled veteran business'' means a small business concern owned and controlled by service-disabled veterans, as defined in section 3(q) of the Small Business Act (15 U.S.C. 632(q)); and

(e) the term ''small business concern'' has the meaning specified in section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the definitions and standards issued under that section.

SEC. 9. *General Provisions*. (a) Heads of agencies shall carry out duties assigned by sections 3, 4, 5, 6, and 7 of this order to the extent consistent with applicable law and subject to the availability of appropriations.

(b) To the extent permitted by law, an agency shall disclose personally identifying information on service-disabled veterans to other agencies who require such information in order to discharge their responsibilities under this order.

(c) An agency that consists of a multi-member commission shall implement this order to the extent it determines appropriate to the accomplishment of the agency's mission.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities or entities, its officers, employees or agents, or any other person.

GEORGE W. BUSH.

DEFINITIONS

Pub. L. 105–135, § 2, Dec. 2, 1997, 111 Stat. 2593, provided that: ''In this Act [see Short Title of 1997 Amendment note above]—

''(1) the term 'Administration' means the Small Business Administration;

''(2) the term 'Administrator' means the Administrator of the Small Business Administration;

''(3) the term 'Committees' means the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate]; and

''(4) the term 'small business concern' has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632).''

Pub. L. 104–208, div. D, § 2, Sept. 30, 1996, 110 Stat. 3009–725, provided that: ''For purposes of this Act [probably should be ''division'', see Short Title of 1996 Amendment note above], the term 'Administrator' means the Administrator of the Small Business Administration.''

## § 631a. Congressional declaration of small business economic policy

### (a) Foster small business

For the purpose of preserving and promoting a competitive free enterprise economic system, Congress hereby 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 department, agency, and instrumentality policies, programs, and activities in order to: foster the economic interests of small businesses; insure a competitive economic climate conducive to the development, growth and expansion of small businesses; establish incentives to assure that adequate capital and other resources at competitive prices are available to small businesses; reduce the concentration of economic resources and expand competition; and provide an opportunity for entrepreneurship, inventiveness, and the creation and growth of small businesses.

### (b) Capital availability to small business

Congress further 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 assure that adequate capital at competitive prices is available to small businesses. To fulfill this policy, de-

partments, agencies, and instrumentalities of the Federal Government shall use all reasonable means to coordinate, create, and sustain policies and programs which promote investment in small businesses, including those investments which expand employment opportunities and which foster the effective and efficient use of human and natural resources in the economy of the Nation.

(Pub. L. 96–302, title III, § 302, July 2, 1980, 94 Stat. 848.)

CODIFICATION

Section was enacted as part of the Small Business Economic Policy Act of 1980, and not as part of the Small Business Act which comprises this chapter.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

SHORT TITLE

For short title of title III of Pub. L. 96–302, as the Small Business Economic Policy Act of 1980, see Short Title of 1980 Amendments note set out under section 631 of this title.

## § 631b. Reports to Congress; state of small business

### (a) Report on Small Business and Competition

The President shall transmit to the Congress not later than January 20 of each year a Report on Small Business and Competition which shall—

(1) examine the current role of small business in the economy on an industry-by-industry basis;

(2) 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;

(3) identify economic trends which will or may affect the small business sector and the state of competition;

(4) examine the effects on small business and competition of policies, programs, and activities, including, but not limited to the Internal Revenue Code [26 U.S.C. 1 et seq.], the Employee Retirement Income Security Act [29 U.S.C. 1001 et seq.], the Securities Act of 1933 [15 U.S.C. 77a et seq.], and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], and regulations promulgated thereunder; identify problems generated by such policies, programs, and activities; and recommend legislative and administrative solutions to such problems; and

(5) recommend a program for carrying out the policy declared in section 631a of this title, together with such recommendations for legislation as he may deem necessary or desirable.

### (b) Appendix to report

The President also shall transmit simultaneously as an appendix to such annual report, a report, by agency and department, on the total dollar value of all Federal contracts exceeding $10,000 in amount and the dollar amount (including the subcontracts thereunder in excess of $10,000) awarded to small, minority-owned, female-owned, and veteran-owned businesses.

### (c) Supplementary reports

The President may transmit from time to time to the Congress reports supplementary to the Report on Small Business and Competition, each of which shall include such supplementary or revised recommendations as he may deem necessary or desirable to achieve the policy declared in section 631a of this title.

### (d) Referral to Congressional committees

The Report on Small Business and Competition and all supplementary reports transmitted under subsections (b) and (c) of this section shall, when transmitted to Congress, be referred to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives.

### (e) Small business concerns owned by disadvantaged individuals and by women [1]

The information and data required to be reported pursuant to subsection (a) of this section shall separately detail those portions of such information and data that are relevant to—

(1) small business concerns owned and controlled by socially and economically disadvantaged individuals, by gender, as defined pursuant to section 637(d) of this title;

(2) small business concerns owned and controlled by women; and

(3) [2] qualified HUBZone small business concern (as defined in section 632(p) of this title).

(3) [2] small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, and small business concerns owned and controlled by service-disabled veterans, as defined in such section 632(q) of this title.

(Pub. L. 96–302, title III, § 303, July 2, 1980, 94 Stat. 848; Pub. L. 100–533, title V, § 503, Oct. 25, 1988, 102 Stat. 2697; Pub. L. 100–590, title I, § 124, Nov. 3, 1988, 102 Stat. 3000; Pub. L. 101–574, title III, § 305, Nov. 15, 1990, 104 Stat. 2829; Pub. L. 105–135, title VI, § 604(c), title VII, § 705, Dec. 2, 1997, 111 Stat. 2633, 2637; Pub. L. 106–50, title VI, § 602, Aug. 17, 1999, 113 Stat. 248.)

REFERENCES IN TEXT

The Internal Revenue Code, referred to in subsec. (a)(4), is classified to Title 26, Internal Revenue Code.

The Employee Retirement Income Security Act, referred to in subsec. (a)(4), is Pub. L. 93–406, Sept. 2, 1974, 88 Stat. 829, as amended, which is classified principally to chapter 18 (§ 1001 et seq.) 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.

The Securities Act of 1933, referred to in subsec. (a)(4), is act May 27, 1933, ch. 38, title I, 48 Stat. 74, as amended, which is classified generally to subchapter I (§ 77a et seq.) of chapter 2A of this title. For complete classification of this Act to the Code, see section 77a of this title and Tables.

[1] See 1988 Amendment note below.

[2] So in original. Two pars. (3) have been enacted.

The Securities Exchange Act of 1934, referred to in subsec. (a)(4), is act June 6, 1934, ch. 404, 48 Stat. 881, as amended, which is classified principally to chapter 2B (§ 78a et seq.) of this title. For complete classification of this Act to the Code, see section 78a of this title and Tables.

CODIFICATION

Section was enacted as part of the Small Business Economic Policy Act of 1980, and not as part of the Small Business Act which comprises this chapter.

AMENDMENTS

1999—Subsec. (e)(1). Pub. L. 106–50, § 602(1), which directed amendment of par. (1) by striking ''and'' after the semicolon, could not be executed because the word ''and'' did not appear after the semicolon.

Subsec. (e)(2). Pub. L. 106–50, § 602(2), which directed amendment of par. (2) by substituting ''; and'' for the period, could not be executed because par. (2) did not contain a period.

Subsec. (e)(3). Pub. L. 106–50, § 602(3), added par. (3) relating to small business concerns owned and controlled by veterans.

1997—Subsec. (b). Pub. L. 105–135, § 705, substituted '', female-owned, and veteran-owned businesses'' for ''and female-owned businesses''.

Subsec. (e)(3). Pub. L. 105–135, § 604(c), added par. (3).

1990—Subsec. (a)(2). Pub. L. 101–574 added par. (2) and struck out former par. (2) which read as follows: ''present current and historical data on production, employment, investment, and other economic variables for small business in the economy as a whole and for small business in each sector of the economy;''.

1988—Subsec. (e). Pub. L. 100–533 and Pub. L. 100–590 added subsecs. (e) which were identical, except that the subsec. (e) added by Pub. L. 100–533, which is set out as text of this section, contained the phrase '', by gender,'' in par. (1).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsecs. (a) and (b) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 17 and 34 of House Document No. 103–7.

## § 631c. Small Business Manufacturing Task Force

### (a) Establishment

The Administrator of the Small Business Administration (referred to in this subtitle[1] as 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 Small Business 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 per 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

Each 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 Small Business Administration may be detailed to the Task Force without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

### (f) Report

Not later than 1 year after December 8, 2004, and annually thereafter, the Task Force shall 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.

(Pub. L. 108–447, div. K, title I, § 147, Dec. 8, 2004, 118 Stat. 3455.)

REFERENCES IN TEXT

This subtitle, referred to in subsec. (a), is subtitle D (§§ 141–147) of title I of div. K of Pub. L. 108–447, Dec. 8, 2004, 118 Stat. 3453, which enacted this section, amended sections 637, 648, 657b, and 657c of this title, enacted provisions set out as note under section 637 of this title, and amended provisions set out as a note under section 657b of this title. For complete classification of subtitle D to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Small Business Reauthorization and Manufacturing Assistance Act of 2004, and also as part of the Consolidated Appropria-

[1] See References in Text note below.

tions Act, 2005, and not as part of the Small Business Act which comprises this chapter.

### § 632. Small-business concern

#### (a) Criteria

(1) For the purposes of this chapter, a small-business concern, including but not limited to enterprises that are engaged in the business of production of food and fiber, ranching and raising of livestock, agriculture, and all other farming and agricultural related industries, shall be deemed to be one which is independently owned and operated and which is not dominant in its field of operation: *Provided*, That notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it (including its affiliates) has annual receipts not in excess of $750,000.

(2) ESTABLISHMENT OF SIZE STANDARDS.—

(A) IN GENERAL.—In addition to the criteria specified in paragraph (1), 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 chapter or any other Act.

(B) ADDITIONAL CRITERIA.—The standards described in paragraph (1) may utilize number of employees, dollar volume of business, net worth, net income, a combination thereof, or other appropriate factors.

(C) REQUIREMENTS.—Unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

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

(ii) provides for determining—

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

(II) 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;

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

(IV) other appropriate factors; and

(iii) is approved by the Administrator.

(3) When establishing or approving any size standard pursuant to paragraph (2), the Administrator shall ensure that the size standard varies from industry to industry to the extent necessary to reflect the differing characteristics of the various industries and consider other factors deemed to be relevant by the Administrator.

#### (b) "Agency" defined

For purposes of this chapter, any reference to an agency or department of the United States, and the term ''Federal agency'', shall have the meaning given the term ''agency'' by section 551(1) of title 5, but does not include the United States Postal Service or the Government Accountability Office.

#### (c) Qualified employee trust; eligibility for loan guarantee; "qualified employee trust" defined; regulations for treatment of trust as qualified employee trust

(1) For purposes of this chapter, a qualified employee trust shall be eligible for any loan guarantee under section 636(a) of this title with respect to a small business concern on the same basis as if such trust were the same legal entity as such concern.

(2) For purposes of this chapter, the term ''qualified employee trust'' means, with respect to a small business concern, a trust—

(A) which forms part of an employee stock ownership plan (as defined in section 4975(e)(7) of title 26)—

(i) which is maintained by such concern, and

(ii) which 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)(8) of title 26) which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of outstanding common shares voted; and

(B) in the case of any loan guarantee under section 636(a) of this title, the trustee of which enters into an agreement with the Administrator which is binding on the trust and on such small business concern and which provides that—

(i) the loan guaranteed under section 636(a) of this title shall be used solely for the purchase of qualifying employer securities of such concern,

(ii) all funds acquired by the concern in such purchase shall be used by such concern solely for the purposes for which such loan was guaranteed,

(iii) such concern will provide such funds as may be necessary for the timely repayment of such loan, and the property of such concern shall be available as security for repayment of such loan, and

(iv) all qualifying employer securities acquired by such trust in such purchase shall be allocated to the accounts of participants in such plan who are entitled to share in such allocation, and each participant has a nonforfeitable right, not later than the date such loan is repaid, to all such qualifying employer securities which are so allocated to the participant's account.

(3) Under regulations which may be prescribed by the Administrator, a trust may be treated as a qualified employee trust with respect to a small business concern if—

(A) the trust is maintained by an employee organization which represents at least 51 percent of the employees of such concern, and

(B) such concern maintains a plan—

(i) which is an employee benefit plan which is designed to invest primarily in qualifying employer securities (as defined in section 4975(e)(8) of title 26),

(ii) which 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 which are allocated to the account of such participant are to be exercised with respect to a corporate matter which (by law or charter) must be decided by a majority vote of the outstanding common shares voted,

(iii) which provides that each participant who is entitled to distribution from the plan has a right, in the case of qualifying employer securities which are not readily tradeable on an established market, to require that the concern repurchase such securities under a fair valuation formula, and

(iv) which meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of title 26) as the Administrator may prescribe, and

(C) in the case of a loan guarantee under section 636(a) of this title, such organization enters into an agreement with the Administration which is described in paragraph (2)(B).

**(d) "Qualified Indian tribe" defined**

For purposes of section 636 of this title, the term ''qualified Indian tribe'' means an Indian tribe as defined in section 450b(e) of title 25, which owns and controls 100 per centum of a small business concern.

**(e) "Public or private organization for the handicapped" defined**

For purposes of section 636 of this title, the term ''public or private organization for the handicapped'' means one—

(1) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individuals;

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

(3) which, in the production of commodities and in the provision of services during any fiscal year in which it received financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services.

**(f) "Handicapped individual" defined**

For purposes of section 636 of this title, the term ''handicapped individual'' means an individual—

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

(2) who is a service-disabled veteran.

**(g) "Energy measures" defined**

For purposes of section 636 of this title, the term ''energy measures'' includes—

(1) solar thermal energy equipment which is either of the active type based upon mechanically forced energy transfer or of the passive type based on convective, conductive, or radiant energy transfer or some combination of these types;

(2) photovoltaic cells and related equipment;

(3) a product or service the primary purpose of which is conservation of energy through devices or techniques which increase the energy efficiency of existing equipment, methods of operation, or systems which use fossil fuels, and which is on the Energy Conservation Measures list of the Secretary of Energy or which the Administrator determines to be consistent with the intent of this subsection;

(4) equipment the primary purpose of which is production of energy from wood, biological waste, grain, or other biomass source of energy;

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

(6) hydroelectric power equipment;

(7) wind energy conversion equipment; and

(8) engineering, architectural, consulting, or other professional services which are necessary or appropriate to aid citizens in using any of the measures described in paragraph (1) through (7).

**(h) "Credit elsewhere" defined**

For purposes of this chapter the term ''credit elsewhere'' means the availability of credit from non-Federal sources on reasonable terms and conditions taking into consideration the prevailing rates and terms in the community in or near where the concern transacts business, or the homeowner resides, for similar purposes and periods of time.

**(i) "Homeowners" defined**

For purposes of section 636 of this title, the term ''homeowners'' includes owners and lessees of residential property and also includes personal property.

**(j) "Small agricultural cooperative" defined**

For the purposes of this chapter, the term ''small agricultural cooperative'' means an association (corporate or otherwise) acting pursuant to the provisions of the Agricultural Marketing Act (12 U.S.C. 1141j), whose size does not exceed the size standard established by the Administration for other similar agricultural small business concerns. In determining such size, the Administration shall regard the association as a business concern and shall not include the income or employees of any member shareholder of such cooperative.

**(k) "Disaster" defined**

For the purposes of this chapter, the term ''disaster'' means a sudden event which causes severe damage including, but not limited to, floods, hurricanes, tornadoes, earthquakes, fires, explosions, volcanoes, windstorms, landslides or mudslides, tidal waves, commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 4107(b) of title 16), ocean conditions resulting in the closure of customary fishing waters, riots, civil disorders or other catastrophes, except it does not include economic dislocations.

**(*l*) "Computer crime" defined**

For purposes of this chapter—

(1)[1] the term ''computer crime'' means—

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

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

**(m) "Simplified acquisition threshold" defined**

For purposes of this chapter, the term ''simplified acquisition threshold'' has the meaning given such term in section 403(11) of title 41.

**(n) "Small business concern owned and controlled by women" defined**

For the purposes of this chapter, a small business concern is a small business concern owned and controlled by women if—

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

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

**(*o*) Definitions of bundling of contract requirements and related terms**

In this chapter:

**(1) 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.

**(2) Bundling of contract requirements**

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—

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

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

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

(D) any combination of the factors described in subparagraphs (A), (B), and (C).

**(3) Separate smaller contract**

The term ''separate smaller contract'', with respect to a bundling of contract requirements, means a contract that has been performed by 1 or more small business concerns or was suitable for award to 1 or more small business concerns.

**(p) Definitions relating to HUBZones**

In this chapter:

**(1) Historically underutilized business zone**

The term ''historically underutilized business zone'' means any area located within 1 or more—

(A) qualified census tracts;

(B) qualified nonmetropolitan counties;

(C) lands within the external boundaries of an Indian reservation;

(D) redesignated areas; or

(E) base closure areas.

**(2) HUBZone**

The term ''HUBZone'' means a historically underutilized business zone.

**(3) 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 pursuant to section 1626(e)(1) of title 43); or

(ii) a direct or indirect subsidiary corporation, joint venture, or partnership of an Alaska Native Corporation qualifying pursuant to section 1626(e)(1) of title 43, if that subsidiary, joint venture, or partnership is owned and controlled by Natives (as determined pursuant to section 1626(e)(2) of title 43);

(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 1 or more small agricultural cooperatives organized or incorporated in the United States; or

(iii) owned in part by 1 or more small agricultural cooperatives organized or incorporated in the United States, if all owners are small business concerns or United States citizens.

**(4) Qualified areas**

**(A) Qualified census tract**

The term ''qualified census tract'' has the meaning given that term in section 42(d)(5)(C)(ii) of title 26.

**(B) Qualified nonmetropolitan county**

The term ''qualified nonmetropolitan county'' means any county—

[1] So in original. No par. (2) has been enacted.

(i) that was not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of title 26) at the time of the most recent census taken for purposes of selecting qualified census tracts under section 42(d)(5)(C)(ii) of title 26; and

(ii) 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; or

(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 such county is located, whichever is less, based on the most recent data available from the Secretary of Labor.

**(C) Redesignated area**

The term ''redesignated area'' means any census tract that ceases to be qualified under subparagraph (A) and any nonmetropolitan county that ceases to be qualified under subparagraph (B), except that a census tract or a nonmetropolitan county may be a ''redesignated area'' only until the later of—

(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

(ii) 3 years afterthe date on which the census tract or nonmetropolitan county ceased to be so qualified.

**(D) Base closure area**

The term ''base closure area'' means lands within the external boundaries of a military installation that were closed through a privatization process under the authority of—

(i) 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);

(ii) title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100–526; 10 U.S.C. 2687 note);

(iii) section 2687 of title 10; or

(iv) 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 of redevelopment, while retaining the authority to enter into a leaseback of all or a portion of the property for military use.

**(5) Qualified HUBZone small business concern**

**(A) In general**

A HUBZone small business concern is ''qualified'', if—

(i) the small business concern has certified in writing to the Administrator (or the Administrator otherwise determines, based on information submitted to the Administrator by the small business concern, or based on certification procedures, which shall be established by the Administration by regulation) that—

(I) it is a HUBZone small business concern—

(aa) pursuant to subparagraph (A), (B), (C), (D), or (E) of paragraph (3), and that its principal office is located in a HUBZone and not fewer than 35 percent of its employees reside in a HUBZone; or

(bb) pursuant to paragraph (3)(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 section 657a(b) of this title 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 under section 657a(b) of this title; and

(III) with respect to any subcontract entered into by the small business concern pursuant to a contract awarded to the small business concern under section 657a of this title, the small business concern will ensure that—

(aa) in the case of a contract for services (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 supplies (other than procurement from a regular dealer in such supplies), not less than 50 percent of the cost of manufacturing the supplies (not including the cost of materials) will be incurred in connection with the performance of the contract in a HUBZone by 1 or more HUBZone small business concerns; and

(cc) in the case of a contract for the procurement by the Secretary of Agriculture of agricultural commodities, 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) no certification made or information provided by the small business concern under clause (i) has been, in accordance with the procedures established under section 657a(c)(1) 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.

**(C) Construction and other contracts**

The Administrator shall promulgate final regulations imposing requirements that are similar to those specified in items (aa) and (bb) of subparagraph (A)(i)(III) on contracts for general and specialty construction, and on 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 subparagraph (B).

**(D) List of qualified small business concerns**

The Administrator shall establish and maintain a list of qualified HUBZone small business concerns, which list shall, to the extent practicable—

(i) once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern, include the name, address, and type of business with respect to each such small business concern;

(ii) be updated by the Administrator not less than annually; and

(iii) be provided upon request to any Federal agency or other entity.

**(6) Native American small business concerns**

**(A) Alaska Native Corporation**

The term ''Alaska Native Corporation'' has the same meaning as the term ''Native Corporation'' in section 1602 of title 43.

**(B) Alaska Native Village**

The term ''Alaska Native Village'' has the same meaning as the term ''Native village'' in section 1602 of title 43.

**(C) Indian reservation**

The term ''Indian reservation''—

(i) has the same meaning as the term ''Indian country'' in section 1151 of title 18, except that such term does not include—

(I) any lands that are located within a State in which a tribe did not exercise governmental jurisdiction on December 21, 2000, unless that 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); and

(II) lands taken into trust or acquired by an Indian tribe after December 21, 2000, if such lands are not located within the external boundaries of an Indian reservation or former reservation or are not contiguous to the lands held in trust or restricted status on December 21, 2000; and

(ii) in the State of Oklahoma, means lands that—

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

(II) are 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).

**(7) Agricultural commodity**

The term ''agricultural commodity'' has the same meaning as in section 5602 of title 7.

**(q) Definitions relating to veterans**

In this chapter, the following definitions apply:

**(1) Service-disabled veteran**

The term ''service-disabled veteran'' means a veteran with a disability that is service-connected (as defined in section 101(16) of title 38).

**(2) 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 or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(B) the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

**(3) 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 or, in the case of any publicly owned business, not less than 51 percent of the stock 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.

**(4) Veteran**

The term ''veteran'' has the meaning given the term in section 101(2) of title 38.

**(r) Definitions relating to small business lending companies**

As used in section 650 of this title:

**(1) Small business lending company**

The term ''small business lending company'' means a business concern that is authorized by the Administrator to make loans pursuant to section 636(a) of this title and whose lending activities are not subject to regulation by any Federal or State regulatory agency.

**(2) Non-Federally regulated SBA lender**

The term ''non-Federally regulated SBA lender'' means a business concern if—

(A) such concern is authorized by the Administrator to make loans under section 636 of this title;

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

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

(Pub. L. 85–536, § 2[3], July 18, 1958, 72 Stat. 384; Pub. L. 94–305, title I, § 112(b), June 4, 1976, 90 Stat. 667; Pub. L. 95–507, title II, § 224(b), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 96–302, title V, § 504, July 2, 1980, 94 Stat. 851; Pub. L. 96–481, title I, § 108, Oct. 21, 1980, 94 Stat. 2323; Pub. L. 97–35, title XIX, § 1903, Aug. 13, 1981, 95 Stat. 771; Pub. L. 98–270, title III, § 310, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98–362, § 6, July 16, 1984, 98 Stat. 434; Pub. L. 98–473, title I, § 111A(b), Oct. 12, 1984, 98 Stat. 1966; Pub. L. 99–272, title XVIII, § 18016, Apr. 7, 1986, 100 Stat. 371; Pub. L. 99–500, § 101(c) [title X, § 921(f)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–149, and Pub. L. 99–591, § 101(c) [title X, § 921(f)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–149; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 99–661, div. A, title IX, formerly title IV, § 921(f), Nov. 14, 1986, 100 Stat. 3929, renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, § 10(b)(2), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100–456, div. A, title VIII, § 845, Sept. 29, 1988, 102 Stat. 2027; Pub. L. 100–590, title I, § 119(b), Nov. 3, 1988, 102 Stat. 2999; Pub. L. 100–656, title VII, § 732, Nov. 15, 1988, 102 Stat. 3897; Pub. L. 101–510, div. A, title VIII, § 806(e)(1), Nov. 5, 1990, 104 Stat. 1592; Pub. L. 102–366, title II, § 222(a), Sept. 4, 1992, 106 Stat. 999; Pub. L. 103–355, title IV, § 4404(a), title VII, § 7106(d), Oct. 13, 1994, 108 Stat. 3349, 3376; Pub. L. 103–403, title III, § 301, Oct. 22, 1994, 108 Stat. 4187; Pub. L. 104–208, div. D, title I, § 104(b)(1), Sept. 30, 1996, 110 Stat. 3009–730; Pub. L. 105–135, title IV, § 412, title VI, § 602(a), Dec. 2, 1997, 111 Stat. 2617, 2627; Pub. L. 106–50, title I, § 103(a), title IV, § 401(a), Aug. 17, 1999, 113 Stat. 234, 243; Pub. L. 106–554, § 1(a)(9) [title VI, §§ 602–604, 611, 612(b)–615(a), title VIII, § 806(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–697 to 2763A–701, 2763A–706; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814; Pub. L. 108–447, div. K, title I, §§ 151, 152(a)(1), (3)–(c)(1), 162, Dec. 8, 2004, 118 Stat. 3456, 3457, 3465.)

REFERENCES IN TEXT

The Agricultural Marketing Act (12 U.S.C. 1141j), referred to in subsec. (j), is act June 15, 1929, ch. 24, 46 Stat. 11, as amended, which is classified generally to chapter 7A (§ 1141 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1141j(f) of Title 12 and Tables.

The Community Economic Development Act of 1981, referred to in subsec. (p)(3)(D)(i), is subchapter A (§§ 611–633) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, Aug. 13, 1981, 95 Stat. 489, as amended. Part 1 of subchapter A of the Act is classified generally to part A (§ 9805 et seq.) of subchapter I of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

CODIFICATION

''Section 450b(e) of title 25'', referred to in subsec. (d), was in the original ''section 4(a) of the Indian Self-Determination and Education Assistance Act'' which is classified to section 450b(a) of Title 25, Indians, but has been editorially translated as section 450b(e) of Title 25 as the probable intent of Congress, in that the definition of ''Indian Tribes'' is set out in subsec. (e) of section 450b of Title 25.

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Prior similar provisions were contained in section 203 of act July 30, 1953, ch. 282, title II, 67 Stat. 233, which was previously classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2004—Subsec. (b). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

Subsec. (j). Pub. L. 108–447, § 151(b), struck out ''of section 636(b)(2)'' after ''For the purposes''.

Subsec. (p)(1)(E). Pub. L. 108–447, § 152(a)(1), added subpar. (E).

Subsec. (p)(3)(A). Pub. L. 108–447, § 151(a)(1)(A), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''a small business concern that is owned and controlled by one or more persons, each of whom is a United States citizen;''.

Subsec. (p)(3)(E). Pub. L. 108–447, § 151(a)(1)(B)–(D), added subpar. (E).

Subsec. (p)(4)(B)(ii)(II). Pub. L. 108–447, § 152(b), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''the unemployment rate is not less than 140 percent of the Statewide average unemployment rate for the State in which the county is located, based on the most recent data available from the Secretary of Labor.''

Subsec. (p)(4)(C). Pub. L. 108–447, § 152(c)(1), substituted ''only until the later of—

''(i) the date on which the Census Bureau publicly releases the first results from the 2010 decennial census; or

''(ii) 3 years after''

for ''only for the 3-year period following''.

Subsec. (p)(4)(D). Pub. L. 108–447, § 152(a)(3), added subpar. (D).

Subsec. (p)(5)(A)(i)(I)(aa). Pub. L. 108–447, § 151(a)(2), substituted ''(C), (D), or (E)'' for ''or (D)''.

Subsec. (r). Pub. L. 108–447, § 162, added subsec. (r).

2000—Subsec. (a)(1). Pub. L. 106–554, § 1(a)(9) [title VIII, § 806(b)], substituted ''$750,000'' for ''$500,000''.

Subsec. (p)(1)(D). Pub. L. 106–554, § 1(a)(9) [title VI, § 613(1)], added subpar. (D).

Subsec. (p)(3). Pub. L. 106–554, § 1(a)(9) [title VI, § 602], amended heading and text of par. (3) generally, substituting present provisions for provisions which had defined ''HUBZone small business concern'' as a small business concern that is owned and controlled by 1 or more persons, each of whom is a United States citizen, and the principal office of which is located in a HUBZone.

Subsec. (p)(3)(D). Pub. L. 106–554, § 1(a)(9) [title VI, § 614(1)], added subpar. (D).

Subsec. (p)(4)(A). Pub. L. 106–554, § 1(a)(9) [title VI, § 611(a)], substituted ''section 42(d)(5)(C)(ii)'' for ''section 42(d)(5)(C)(ii)(I)''.

Subsec. (p)(4)(B). Pub. L. 106–554, § 1(a)(9) [title VI, § 611(b)], added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''The term 'qualified nonmetropolitan county' means any county—

''(i) that, based on the most recent data available from the Bureau of the Census of the Department of Commerce—

''(I) is not located in a metropolitan statistical area (as defined in section 143(k)(2)(B) of title 26); and

''(II) in which the median household income is less than 80 percent of the nonmetropolitan State median household income; or

''(ii) that, based on the most recent data available from the Secretary of Labor, has an unemployment rate that is not less than 140 percent of the statewide

average unemployment rate for the State in which the county is located.''

Subsec. (p)(4)(C). Pub. L. 106–554, §1(a)(9) [title VI, §613(2)], added subpar. (C).

Subsec. (p)(5)(A)(i)(I). Pub. L. 106–554, §1(a)(9) [title VI, §603(a)], added subcl. (I) and struck out former subcl. (I) which read as follows: ''it is a HUBZone small business concern;''.

Subsec. (p)(5)(A)(i)(I)(aa). Pub. L. 106–554, §1(a)(9) [title VI, §614(2)], substituted ''subparagraph (A), (B), or (D)'' for ''subparagraph (A) or (B)''.

Subsec. (p)(5)(A)(i)(II). Pub. L. 106–554, §1(a)(9) [title VI, §603(a)], added subcl. (II) and struck out former subcl. (II) which read as follows: ''not less than 35 percent of the employees of the small business concern reside in a HUBZone, and the small business concern will attempt to maintain this employment percentage during the performance of any contract awarded to the small business concern on the basis of a preference provided under section 657a(b) of this title; and''.

Subsec. (p)(5)(A)(i)(III)(cc). Pub. L. 106–554, §1(a)(9) [title VI, §612(b)(1)], added item (cc).

Subsec. (p)(5)(C). Pub. L. 106–554, §1(a)(9) [title VI, §615(a)], which directed amendment of subpar. (C) by substituting ''items (aa) and (bb) of subparagraph (A)(i)(III)'' for ''subclause (IV) and (V) of subparagraph (A)(i)'', was executed by making the substitution for ''subclauses (IV) and (V) of subparagraph (A)(i)'', to reflect the probable intent of Congress.

Subsec. (p)(5)(D)(i). Pub. L. 106–554, §1(a)(9) [title VI, §603(b)], inserted ''once the Administrator has made the certification required by subparagraph (A)(i) regarding a qualified HUBZone small business concern and has determined that subparagraph (A)(ii) does not apply to that concern,'' before ''include''.

Subsec. (p)(6). Pub. L. 106–554, §1(a)(9) [title VI, §604], added par. (6).

Subsec. (p)(7). Pub. L. 106–554, §1(a)(9) [title VI, §612(b)(2)], added par. (7).

1999—Subsec. (f). Pub. L. 106–50, §401(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: ''For purposes of section 636 of this title, the term 'handicapped individual' means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.''

Subsec. (q). Pub. L. 106–50, §103(a), added subsec. (q).

1997—Subsec. (*o*). Pub. L. 105–135, §412, added subsec. (*o*).

Subsec. (p). Pub. L. 105–135, §602(a), added subsec. (p).

1996—Subsec. (k). Pub. L. 104–208 inserted ''commercial fishery failures or fishery resource disasters (as determined by the Secretary of Commerce under section 4107(b) of title 16),'' after ''tidal waves,''.

1994—Subsec. (a)(2). Pub. L. 103–403 amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In addition to the criteria specified in paragraph (1), the Administrator may specify detailed definitions or standards (by number of employees or dollar volume of business) by which a business concern is to be recognized as a small business concern for the purposes of this chapter or any other Act. Unless specifically authorized by statute, the Secretary of a department or the head of a Federal agency may not prescribe for the use of such department or agency a size standard for categorizing a business concern as a small business concern, unless such proposed size standard—

''(A) is being proposed after an opportunity for public notice and comment;

''(B) provides for determining, over a period of not less than 3 years—

''(i) the size of a manufacturing concern on the basis of the number of its employees during that period; and

''(ii) the size of a concern providing services on basis of the average gross receipts of the concern during that period; and

''(C) is approved by the Administrator.''

Subsec. (m). Pub. L. 103–355, §4404(a), substituted ''''simplified acquisition threshold'''' for ''''small purchase threshold'''' ''.

Subsec. (n). Pub. L. 103–355, §7106(d), added subsec. (n).

1992—Subsec. (a). Pub. L. 102–366 added pars. (2) and (3) and struck out at end of par. (1) ''In addition to the foregoing criteria the Administrator, in making a detailed definition, may use these criteria, among others: Number of employees and dollar volume of business: *Provided*, That the Administration shall not promulgate, amend, or rescind any rule [or] regulation with respect to size standards prior to March 31, 1981. Where the number of employees is used as one of the criteria in making such definition for any of the purposes of this chapter, the maximum number of employees which a small-business concern may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and to take proper account of other relevant factors.''

1990—Subsec. (m). Pub. L. 101–510 added subsec. (m).

1988—Subsec. (a). Pub. L. 100–656 struck out pars. (2) to (5) which established a program for review of size standards for eligibility of business concerns in certain industry categories for a procurement restricted to small business concerns under section 637(a) or 644(a) of this title and provided for adjustment of those standards and periodic review of the program.

Pub. L. 100–456 inserted provisions in par. (4)(C) respecting applicability of regulations to contracts entered into on or after Oct. 1, 1988.

Subsecs. (j) to (*l*). Pub. L. 100–590 added subsec. (k) and redesignated subsec. (j), defining ''computer crime'', as (*l*).

1987—Subsec. (a)(3). Pub. L. 100–26, §10(b)(2)(A), substituted ''dollar value of the contracts to be awarded in that industry category'' for ''value of contracts to be awarded under such sections''.

Subsec. (a)(4)(A)(i). Pub. L. 100–26, §10(b)(2)(B), substituted ''paragraph (3)'' for ''paragraph (3)(A)''.

Subsec. (a)(5). Pub. L. 100–26, §10(b)(2)(C), substituted ''shall be made not later than 180 days after the end of each such'' for ''made with the expiration of 180 days after each''.

1986—Subsec. (a). Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661 amended subsec. (a) identically designating existing provision as par. (1) and adding pars. (2) to (5).

Pub. L. 99–272 inserted proviso that notwithstanding any other provision of law, an agricultural enterprise shall be deemed to be a small business concern if it, including its affiliates, has annual receipts not in excess of $500,000.

Subsec. (c)(2)(A), (3)(B)(i), (iv). 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.

1984—Subsec. (j). Pub. L. 98–473 in subsec. (j) added by Pub. L. 98–270 substituted ''as a business concern and shall not include the income or employees of any member shareholder of such cooperative'' for ''as an entity and shall not include the income or employees of any member shareholder of such cooperative: *Provided*, That such an association shall not be deemed to be a small agricultural cooperative unless each member of the board of directors of the association, or each member of the governing body of the association if it is not incorporated, also individually qualifies as a small business concern''.

Pub. L. 98–362 added subsec. (j) defining ''computer crime''.

Pub. L. 98–270 added subsec. (j) defining ''small agricultural cooperative''.

1981—Subsecs. (d) to (i). Pub. L. 97–35 added subsecs. (d) to (i).

1980—Subsec. (a). Pub. L. 96–481, in the additional criteria inserted proviso that the Administration shall not promulgate, amend, or rescind any rule or regula-

tion with respect to size standards prior to March 31, 1981.

Subsec. (c). Pub. L. 96–302 added subsec. (c).

1978—Pub. L. 95–507 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94–305 inserted reference to enterprises that are engaged in business of production of food and fiber, ranching and raising of livestock, aquaculture, and all other farming and agricultural related industries.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Section 104(b)(2) of div. D of Pub. L. 104–208 provided that: ''The amendment made by paragraph (1) [amending this section] shall be effective with respect to any disaster occurring on or after March 1, 1994.''

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1987 AMENDMENT

Section 12(c) of Pub. L. 100–26 provided that: ''The amendments made by sections 5 [amending section 2365 of Title 10, Armed Forces, and amending provisions set out as notes under sections 1621, 2326, and 2437 of Title 10] and 10 [amending this section, sections 637 and 644 of this title, and provisions set out as a note under this section] shall apply as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2) [title X of section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and title IX of div. A of Pub. L. 99–661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively].''

EFFECTIVE DATE OF 1986 AMENDMENT; INITIAL REVIEW OF STANDARDS

Section 101(c) [title X, §921(g), (h)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(g), (h) of title IX, formerly title IV, of Pub. L. 99–661; renumbered title IX and amended by Pub. L. 100–26, §§3(5), 10(a)(2), Apr. 21, 1987, 101 Stat. 273, 288; Pub. L. 100–180, div. A, title VIII, §809(d), Dec. 4, 1987, 101 Stat. 1130, provided that:

''(g) EFFECTIVE DATES.—Except as otherwise provided in subsection (h), the amendments made by this section [amending this section and sections 637 and 644 of this title and enacting provisions set out as notes below] shall take effect on October 1, 1987.

''(h) INITIAL REVIEW OF SIZE STANDARDS.—(1) Paragraph (2) of section 3(a) of the Small Business Act (as added by subsection (f)) [15 U.S.C. 632(a)(2)] shall take effect on the date of the enactment of this Act [Oct. 18, 1986].

''(2) The first review conducted by the Administrator under such paragraph shall review the periods beginning on October 1, 1983, and ending on September 30, 1986, and shall be completed not later than 180 days after the date of the enactment of this Act.

''(3) If the Administrator of the Small Business Administration determines, on the basis of the review referred to in paragraph (2), that contracts awarded under the set-aside programs under sections 8(a) and 15(a) of the Small Business Act [15 U.S.C. 637(a), 644(a)] in any industry category subject to that review exceed 30 percent of the dollar value of the total contract awards for that industry category, as determined in accordance with the last sentence of section 15(a)(3) of such Act, the Administrator shall propose adjustments to the size standards for such industry category establishing eligibility for a set-aside program to a size that will likely reduce the number of contracts which may be set aside to approximately 30 percent of the dollar value of the contracts to be awarded in that industry category. The Administrator shall publish proposed regulations, including any revised size standards, in the Federal Register by November 30, 1987, or the date of enactment of the National Defense Authorization Act for Fiscal Years 1988 and 1989 [Pub. L. 100–180, Dec. 4, 1987], whichever is later. The proposed regulations shall provide not less than 60 days for public comment. The Administrator shall issue final regulations not later than May 31, 1988.

EFFECTIVE DATE OF 1984 AMENDMENTS

Section 312 of title III of Pub. L. 98–270 provided that: ''The amendments made by sections 310 and 311 of this title [amending this section and section 636 of this title] shall apply to loans granted on the basis of any disaster with respect to which a declaration has been issued after September 1, 1982, under section 7(b)(2) (A), (B), or (C) of the Small Business Act [15 U.S.C. 636(b)(2)(A), (B), (C)] or with respect to which a certification has been made after such date under section 7(b)(2)(D) of such Act.''

Section 313 of title III of Pub. L. 98–270 provided that: ''This title [amending this section and sections 633, 636, and 647 of this title, enacting provisions set out as notes under sections 632 and 636 of this title, and amending provisions set out as a note under section 631 of this title] shall take effect October 1, 1983.''

Amendment by Pub. L. 98–362 effective Oct. 1, 1984, see section 7(a) of Pub. L. 98–362, set out as an Effective and Termination Dates of 1984 Amendments note under section 633 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

REGULATIONS

Section 605 of title VI of Pub. L. 105–135 provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Dec. 2, 1997], the Administrator shall publish in the Federal Register such final regulations as may be necessary to carry out this title [see Short Title of 1997 Amendment note set out under section 631 of this title] and the amendments made by this title.

''(b) FEDERAL ACQUISITION REGULATION.—Not later than 180 days after the date on which final regulations are published under subsection (a), the Federal Acquisition Regulatory Council shall amend the Federal Acquisition Regulation in order to ensure consistency between the Federal Acquisition Regulation, this title and the amendments made by this title, and the final regulations published under subsection (a).''

Section 222(b) of Pub. L. 102–366 provided that:

''(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Sept. 4, 1992], the Administrator of the Small Business Administration shall issue proposed regulations to implement the amendments made by subsection (a) [amending this section]. Final regulations shall be issued not later than 270 days after such date of enactment.

''(2) LISTING OF ADDITIONAL SIZE STANDARDS.—The regulations required by paragraph (1) shall include a listing of all small business size standards prescribed by statute or by individual Federal departments and agencies, identifying the programs or purposes to which such size standards apply.''

HUBZONE STATUS TIME LINE AND COMMENCEMENT

Pub. L. 108–447, div. K, title I, §152(a)(2), Dec. 8, 2004, 118 Stat. 3457, provided that: ''A base closure area that

has undergone final closure shall be treated as a HUBZone for purposes of the Small Business Act [15 U.S.C. 631 et seq.] for a period of 5 years.''

CONTINUED EFFECTIVENESS OF NUMERICAL SIZE STANDARDS IN EFFECT ON SEPTEMBER 30, 1988

The last sentence of section 732 of Pub. L. 100–656 which provided that any numerical size standard that pertained to any of the designated industry groups, and that was in effect on Sept. 30, 1988, was to remain in effect for the duration of the Program, was repealed by Pub. L. 103–160, div. A, title VIII, § 850(1), Nov. 30, 1993, 107 Stat. 1726. See section 717(f) of Pub. L. 100–656, set out as a note under section 644 of this title.

REPORT ON EFFECT OF 1986 AMENDMENTS

Section 101(c) [title X, § 921(i)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(i) of title IX, formerly title IV, of Pub. L. 99–661; renumbered title IX, Pub. L. 100–26, § 3(5), Apr. 21, 1987, 101 Stat. 273, directed Administrator of the Small Business Administration, not later than July 15, 1987, to submit to Congress a report on the amendments to sections 632, 637, and 644 of this title made by this section which was to include Administrator's views on the advisability and feasibility of implementing such amendments, Administrator's findings and determinations under the review of size standards for businesses that qualify as small businesses carried out pursuant to 15 U.S.C. 632(a)(2)(B), a determination of whether or not the amendments to section 632 of this title would further the interests of the set-aside program, and recommendations for furthering certain interests in a more efficient or effective manner than provided in such amendments.

## § 633. Small Business Administration

### (a) Creation; principal, branch, and regional offices

In order to carry out the policies of this chapter there is created an agency under the name ''Small Business Administration'' (herein referred to as the Administration), which Administration shall be under the general direction and supervision of the President and shall not be affiliated with or be within any other agency or department of the Federal Government. The principal office of the Administration shall be located in the District of Columbia. The Administration may establish such branch and regional offices in other places in the United States as may be determined by the Administrator of the Administration. As used in this chapter, the term ''United States'' includes the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia.

### (b) Appointment of Administrator, Deputy Administrator, and Associate Administrators; duties of Administrator: preparation of data base and publication of economic indices and annual report; risk management database; computer security and education program

(1) 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. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carrying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint five Associate Administrators (including the Associate Administrator specified in section 671 of this title) to assist in the execution of the functions vested in the Administration. One such Associate Administrator shall be the Associate Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 657b of this title. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee and shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 636(j) and 637(a) of this title which provide assistance to minority small business concerns. 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 the Administrator.

(2) The Administrator also shall be responsible for—

(A) establishing and maintaining an external small business economic data base for the purpose of providing the Congress and the Administration information on the economic condition and the expansion or contraction of the small business sector. To that end, the Administrator shall publish on a regular basis national small business economic indices and, to the extent feasible, regional small business economic indices, which shall include, but need not be limited to, data on—

(i) employment, layoffs, and new hires;

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

(iii) number of business formations and failures;

(iv) sales and new orders;

(v) back orders;

(vi) investment in plant and equipment;

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

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

(ix) debt to equity ratios;

(x) exports;

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

(xii) concentration ratios; and

(B) publishing annually a report giving a comparative analysis and interpretation of the historical trends of the small business sector as reflected by the data acquired pursuant to subparagraph (A) of this subsection.

(3) RISK MANAGEMENT DATABASE.—

(A) ESTABLISHMENT.—The Administration shall establish, within the management system for the loan programs authorized by subsections (a) and (b) of section 636 of this title and title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.], 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.

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

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

(ii) the identity of the borrower;

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

(iv) the total dollar amount of government exposure in each loan;

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

(vi) the principal line of business of the borrower, as identified by Standard Industrial Classification Code (or any successor to that system);

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

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

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

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

(xi) 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.

(C) DEADLINE FOR OPERATIONAL CAPABILITY.—The database established under subparagraph (A) shall—

(i) be operational not later than June 30, 1997; and

(ii) capture data beginning on the first day of the second quarter of fiscal year 1997 beginning after such date and thereafter.

(4)(A) The Administrator shall establish a small business computer security and education program to—

(i) provide small business concerns information regarding—

(I) utilization and management of computer technology;

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

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

(ii) provide for periodic forums for small business concerns to improve their knowledge of the matters described in clause (i); and

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

(B) The Administrator, after consultation with the Director of the Institute of Computer Sciences and Technology within the Department of Commerce, shall develop information and materials to carry out the activities described in subparagraph (A) of this paragraph.

**(c) Revolving funds; disaster loan fund; business loan and investment fund; payments into funds; appropriations; reports to Congress; business-type budgets; borrowing authority: terms and conditions of notes, interest rate, public debt transactions; payments into miscellaneous receipts; authorization of appropriations for losses and interest subsidies**

(1) There are established in the Treasury the following revolving funds: (A) a disaster loan fund which shall be available for financing functions performed under sections 634(e), 636(b)(1), 636(b)(2), 636(b)(3), 636(b)(4), 636(c)(2), and 636(m) of this title; and (B) a business loan and investment fund which shall be available for financing functions performed under sections 634(g), 636(a) and 637(a) of this title, and titles III, IV and V of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq., 692 et seq., 695 et seq.].

(2) All repayments of loans and debentures, payments of interest and other receipts arising out of transactions heretofore or hereafter entered into by the Administration (A) pursuant to sections 634(e), 636(b)(1), 636(b)(2), 636(b)(3), 636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(c)(2), and 636(g) of this title, shall be paid into a disaster loan fund; and (B) pursuant to sections 634(g), 636(a), 636(e),[1] 636(h), 636(i), 636(*l*),[1] 636(m), and 637(a) of this title, and titles III, IV and V of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq., 692 et seq., 695 et seq.], shall be paid into the business loan and investment fund.

(3) Unexpended balances of appropriations made to the fund pursuant to this subsection, as in effect immediately prior to the effective date of this paragraph, shall be allocated, together with related assets and liabilities, to the funds established by paragraph (1) in such amounts as the Administrator shall determine.

(4) The Administration shall submit to the Committees on Appropriations, Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, as soon as possible after the beginning of each calendar quarter, a full and complete report on the status of each of the funds

[1] See References in Text note below.

established by paragraph (1). Business-type budgets for each of the funds established by paragraph (1) shall be prepared, transmitted to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives, and considered, and enacted in the manner prescribed by law (sections 9103 and 9104 of title 31) for wholly owned Government corporations.

(5)(A) The Administration is authorized to make and issue notes to the Secretary of the Treasury for the purpose of obtaining funds necessary for discharging obligations under the revolving funds created by paragraph (1) and for authorized expenditures out of the funds. Such notes shall be in such form and denominations and have such maturities and be subject to such terms and conditions as may be prescribed by the Administration with the approval of the Secretary of the Treasury. Such notes 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 the notes issued by the Administration under this paragraph. The Secretary of the Treasury is authorized and directed to purchase any notes of the Administration issued hereunder, and, for that purpose, the Secretary of the Treasury is authorized to 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 such chapter are extended to include the purchase of notes issued by the Administration. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes shall be treated as public debt transactions of the United States. All borrowing authority contained herein shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

(B)(i) Moneys in the funds established in paragraph (1) not needed for current operations may be paid into miscellaneous receipts of the Treasury.

(ii) Following the close of each fiscal year, the Administration 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 this chapter.

(C) Except on those loan disbursements on which interest is paid under paragraph (5)(B)(ii), the Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest received by the Administration on financing functions performed under this chapter and titles III and V of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq., 695 et seq.] providing the capital used to perform such functions originated from appropriated funds. Such payments shall be treated by the Department of the Treasury as interest income, not as retirement of indebtedness.

(D) There are authorized to be appropriated, in any fiscal year, such sums as may be necessary for losses and interest subsidies incurred by the funds established by paragraph (1), but not previously reimbursed.

**(d) Creation and composition of Loan Policy Board; establishment of policies**

There is created the Loan Policy Board of the Small Business Administration, which shall consist of the following members, all ex officio: The Administrator, as Chairman, the Secretary of the Treasury, and the Secretary of Commerce. Either of the said Secretaries may designate an officer of his Department, who has been appointed by the President by and with the advice and consent of the Senate, to act in his stead as a member of the Loan Policy Board with respect to any matter or matters. The Loan Policy Board shall establish general policies (particularly with reference to the public interest involved in the granting and denial of applications for financial assistance by the Administration 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 Administration.

**(e) Prohibition on provision of assistance**

Notwithstanding any other provision of law, the Administration is prohibited from providing 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 to be obscene by a court of competent jurisdiction.

**(f) Certification of compliance with child support obligations**

**(1) In general**

For financial assistance approved after the promulgation of final regulations to implement this section, each recipient of financial assistance under this chapter, including a recipient of a direct loan or a loan guarantee, shall certify that the recipient is not more than 60 days delinquent under the terms of any—

(A) administrative order;

(B) court order; or

(C) 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 such term is defined in section 662(b)[1] of title 42.

**(2) Enforcement**

Not later than 6 months after October 22, 1994, the Administration shall promulgate such regulations as may be necessary to enforce compliance with the requirements of this subsection.

**(g) Gifts**

**(1) In general**

The Administrator may, for purposes of this chapter, the Small Business Investment Act of 1954,[2] and title IV of the Women's Business Ownership Act of 1988 [15 U.S.C. 7101 et seq.], solicit, accept, hold, administer, utilize, and dispose of gifts, devises, and bequests of cash,

[2] So in original. Probably should be ''1958,''.

property (including tangible, intangible, real, and personal), subsistence, and services. Notwithstanding any other provision of law, the Administrator may utilize gifts, devises, or bequests for marketing and outreach activities, including the cost of promotional materials and wearing apparel.

**(2) Audits**

Any gift, devise, or bequest of cash accepted by the Administrator shall be held in a separate account and shall be subject to semi-annual audits by the Inspector General of the Administration who shall report his findings to the Congress.

**(3) Conflicts of interest**

No gift, devise, or bequest shall be solicited or accepted under the authority of this subsection if such solicitation or acceptance would, in the determination of the General Counsel, create a conflict of interest.

**(4) Acceptance of services and facilities for disaster loan program**

The Administrator may accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 636(b) of this title.

**(h) Co-sponsorship of events**

**(1) Authorization**

The Administrator, after consultation with the General Counsel, may provide assistance for the benefit of small business through Administration-sponsored activities, through co-sponsored activities with any eligible entity, or through such other activities that the Administrator determines to be appropriate, including recognition events.

**(2) Eligible entity**

For purposes of this subsection, the term ''eligible entity'' means any for-profit or not-for-profit entity, any Federal, State, or local government official, or any Federal, State, or local government entity.

**(3) Prohibition on endorsements**

The Administrator shall ensure that the Administration and any eligible entities that co-sponsor activities receive appropriate recognition for such cosponsorship, and that such recognition does not constitute or imply an endorsement by the Administration of any product or service of such entity.

**(4) Authority to charge fees**

Notwithstanding any other provision of law, the Administrator may charge a participant in any activity sponsored or cosponsored by the Administration a minimal fee, and retain and use such fee to cover the costs of such activity.

**(5) Limited delegation**

The Administrator may not delegate the authority described in this subsection except to the Deputy Administrator, an Associate Administrator, or an Assistant Administrator.

**(6) Report to Congress**

The Inspector General of the Administration shall report semi-annually to Congress on the Administrator's use of authority under this subsection.

**(7) Rulemaking**

Not later than 180 days after December 8, 2004, the Administrator shall promulgate regulations to carry out the provisions of this subsection.

(Pub. L. 85–536, §2[4], July 18, 1958, 72 Stat. 384; Pub. L. 85–699, title II, §202, formerly §202(a), Aug. 21, 1958, 72 Stat. 690, renumbered Pub. L. 87–341, §11(h)(1), Oct. 3, 1961, 75 Stat. 757; amended Pub. L. 86–367, §1, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87–70, title III, §305(c), June 30, 1961, 75 Stat. 167; Pub. L. 87–198, Sept. 5, 1961, 75 Stat. 468; Pub. L. 87–305, §3, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87–341, §§11(h)(3), (4), 12, Oct. 3, 1961, 75 Stat. 757; Pub. L. 87–550, §1(a), July 25, 1962, 76 Stat. 220; Pub. L. 89–59, §§1(c), 2, June 30, 1965, 79 Stat. 207; Pub. L. 89–78, July 21, 1965, 79 Stat. 243; Pub. L. 89–117, title III, §316(d), Aug. 10, 1965, 79 Stat. 484; Pub. L. 89–334, Nov. 8, 1965, 79 Stat. 1294; Pub. L. 89–409, §§1, 2, May 2, 1966, 80 Stat. 132; Pub. L. 89–779, §8(a), (b), Nov. 6, 1966, 80 Stat. 1364; Pub. L. 90–104, title I, §102, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90–448, title XVII, §1721, Aug. 1, 1968, 82 Stat. 610; Pub. L. 91–173, title V, §504(c), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91–558, title I, §101, Dec. 17, 1970, 84 Stat. 1468; Pub. L. 91–596, §28(c), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91–597, §25(c), Dec. 29, 1970, 84 Stat. 1634; Pub. L. 92–16, May 18, 1971, 85 Stat. 39; Pub. L. 92–320, §1, June 27, 1972, 86 Stat. 382; Pub. L. 92–385, §2(b), Aug. 16, 1972, 86 Stat. 556; Pub. L. 92–500, §8(b), Oct. 18, 1972, 86 Stat. 899; Pub. L. 92–595, §3(a), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93–237, §§1, 3(b), 8, Jan. 2, 1974, 87 Stat. 1023–1025; Pub. L. 93–386, §§2(a)(2), (3), 7, Aug. 23, 1974, 88 Stat. 742, 748; Pub. L. 94–273, §2(5), Apr. 21, 1976, 90 Stat. 375; Pub. L. 95–14, §§1–3, Mar. 24, 1977, 91 Stat. 25; Pub. L. 95–89, title I, §101(a)–(c), title II, §§201, 202, title III, §304, title IV, §401, Aug. 4, 1977, 91 Stat. 553, 557, 559; Pub. L. 95–315, §4, July 4, 1978, 92 Stat. 379; Pub. L. 95–507, title II, §206, Oct. 24, 1978, 92 Stat. 1766; Pub. L. 96–302, title I, §121, title IV, §401, July 2, 1980, 94 Stat. 842, 849; Pub. L. 96–481, title I, §103, Oct. 21, 1980, 94 Stat. 2321; Pub. L. 97–35, title XIX, §§1908, 1913(b), 1915, Aug. 13, 1981, 95 Stat. 778, 780; Pub. L. 98–270, title III, §306, Apr. 18, 1984, 98 Stat. 161; Pub. L. 98–352, §5, July 10, 1984, 98 Stat. 331; Pub. L. 98–362, §§3, 4, July 16, 1984, 98 Stat. 431, 433; Pub. L. 100–590, title I, §111(a), Nov. 3, 1988, 102 Stat. 2995; Pub. L. 100–656, title IV, §401(a), Nov. 15, 1988, 102 Stat. 3873; Pub. L. 101–37, §11(a), June 15, 1989, 103 Stat. 73; Pub. L. 101–515, title V, §1(a), Nov. 5, 1990, 104 Stat. 2140; Pub. L. 101–574, title II, §221(a), Nov. 15, 1990, 104 Stat. 2823; Pub. L. 102–140, title VI, §609(k), Oct. 28, 1991, 105 Stat. 831; Pub. L. 103–403, title VI, §§601, 611, 612, Oct. 22, 1994, 108 Stat. 4201, 4204; Pub. L. 104–208, div. D, title I, §102, Sept. 30, 1996, 110 Stat. 3009–725; Pub. L. 106–50, title II, §201(a), Aug. 17, 1999, 113 Stat. 235; Pub. L. 108–447, div. K, title I, §132(a), (c), Dec. 8, 2004, 118 Stat. 3452, 3453.)

AMENDMENT OF SECTION

*For termination of amendment by section 132(c) of Pub. L. 108–447, see Termination Date of 2004 Amendment note below.*

REFERENCES IN TEXT

The effective date of this paragraph, referred to in subsec. (c)(3), is July 1, 1966, pursuant to Pub. L. 89–409, § 2.

The Small Business Investment Act of 1958, referred to in subsecs. (b)(3)(A), (c)(1), (2), (5)(C), and (g)(1), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended. Titles III, IV, and V of the Act are classified generally to subchapters III (§ 681 et seq.), IV (§ 692 et seq.), and V (§ 695 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Sections 636(e) and 636(*l*) of this title, referred to in subsec. (c)(2)(B), were amended generally to read ''[RESERVED].'' by Pub. L. 104–208, div. D, title I, § 107(b), (d), Sept. 30, 1996, 110 Stat. 3009–732.

Section 662 of title 42, referred to in subsec. (f)(1), was repealed by Pub. L. 104–193, title III, § 362(b)(1), Aug. 22, 1996, 110 Stat. 2246.

The Women's Business Ownership Act of 1988, referred to in subsec. (g)(1), is Pub. L. 100–533, Oct. 25, 1988, 102 Stat. 2689, as amended. Title IV of the Act is classified generally to chapter 97 (§ 7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 631 of this title and Tables.

CODIFICATION

In subsec. (c)(4), (5)(A), ''(sections 9103 and 9104 of title 31)'' substituted for ''(sections 102, 103, and 104 of the Government Corporation Control Act (31 U.S.C. 847–849))'', and ''chapter 31 of title 31'' and ''such chapter'' substituted for ''the Second Liberty Bond Act, as amended'' and ''such Act, as amended,'', respectively, 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.

PRIOR PROVISIONS

Prior similar provisions were contained in section 204 of act July 30, 1953, ch. 282, title II, 67 Stat. 233, as amended by acts Aug. 9, 1955, ch. 628, § 3, 69 Stat. 547; Feb. 2, 1956, ch. 29, § 1, 70 Stat. 10; July 31, 1956, ch. 804, title I, §§ 106(a), 107(b), 70 Stat. 737; Pub. L. 85–4, §§ 1, 2, Feb. 11, 1957, 71 Stat. 1; Pub. L. 85–120, § 1, Aug. 3, 1957, 71 Stat. 341, which was previously classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2004—Subsecs. (g), (h). Pub. L. 108–447, § 132(a), (c), temporarily added subsecs. (g) and (h). See Termination Date of 2004 Amendment note below.

1999—Subsec. (b)(1). Pub. L. 106–50 substituted ''five Associate Administrators'' for ''four Associate Administrators'' in fifth sentence and inserted after fifth sentence ''One such Associate Administrator shall be the Associate Administrator for Veterans Business Development, who shall administer the Office of Veterans Business Development established under section 657b of this title.''

1996—Subsec. (b)(3). Pub. L. 104–208 added par. (3).

1994—Subsec. (c)(5)(B)(ii). Pub. L. 103–403, § 601, amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''The Administration shall pay into miscellaneous receipts of the Treasury, following the close of each fiscal year, interest on the average of loan disbursements outstanding throughout the year providing such disbursements are made from amounts appropriated for the disaster loan fund after October 1, 1980 or are made from repayments of principal of loans made from funds appropriated to the disaster loan fund, or from amounts appropriated to the business loan and investment fund on or after October 1, 1981 or are made from repayments of principal of loans made from funds appropriated to the business loan and investment fund and received on or after October 1, 1981. This interest shall be calculated solely on the amount of loan disbursements net of losses at the rate provided under paragraph (5)(A).''

Subsec. (e). Pub. L. 103–403, § 611, added subsec. (e).

Subsec. (f). Pub. L. 103–403, § 612, added subsec. (f).

1991—Subsec. (c)(1)(A), (2)(B). Pub. L. 102–140 inserted reference to section 636(m).

1990—Subsec. (b)(1). Pub. L. 101–515 and Pub. L. 101–574 amended par. (1) identically, substituting ''The President also may appoint a Deputy Administrator, by and with the advice and consent of the Senate. The Administrator is authorized to appoint'' for ''The Administrator is authorized to appoint a Deputy Administrator and''.

1989—Subsec. (b)(1). Pub. L. 101–37 made technical correction to directory language of Pub. L. 100–656, § 401(a), see 1988 Amendment note below.

1988—Subsec. (b)(1). Pub. L. 100–656, § 401(a), as amended by Pub. L. 101–37, inserted ''who shall be an employee in the competitive service or in the Senior Executive Service and a career appointee'' after ''Capital Ownership Development''.

Subsec. (c)(1)(B), (2)(B). Pub. L. 100–590, § 111(a), substituted ''III, IV'' for ''III''.

1984—Subsec. (b)(3). Pub. L. 98–362, §§ 3, 7(b), added par. (3) and provided for future repeal of par. (3). See Effective and Termination Dates of 1984 Amendment note below.

Subsec. (b)(4). Pub. L. 98–362, § 4, added par. (4).

Subsec. (c)(1)(A). Pub. L. 98–270 inserted reference to section 636(b)(4).

Subsec. (c)(1)(B), (2)(B). Pub. L. 98–352 inserted reference to section 634(g).

1981—Subsec. (c)(1)(A). Pub. L. 97–35, § 1913(b), substituted ''636(c)(2) of this title'' for ''636(b)(4), 636(b)(5), 636(b)(6), 636(b)(7), 636(b)(8), 636(c)(2), and 636(g) of this title''.

Subsec. (c)(1)(B). Pub. L. 97–35, § 1908, struck out reference to sections 636(e), 636(h), 636(i), and 636(*l*).

Subsec. (c)(5)(B)(ii). Pub. L. 97–35, § 1915, substituted ''for the disaster loan fund after October 1, 1980 or are made from repayments of principal of loans made from funds appropriated to the disaster loan fund, or from amounts appropriated to the business loan and investment fund on or after October 1, 1981 or are made from repayments of principal of loans made from funds appropriated to the business loan and investment fund and received on or after October 1, 1981'' for ''after October 1, 1980 or are made from repayments of principal of loans made from appropriated funds''.

1980—Subsec. (b). Pub. L. 96–302, § 401, designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(1). Pub. L. 96–481, which provided for ''striking all after the phrase 'Capital Ownership Development' through the period'' and inserting new text in lieu thereof was executed by striking all after ''Capital Ownership Development'' through period at end of sentence and not at end of paragraph which resulted in substituting provisions that the Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 636(j) and 637(a) of this title for provisions, that such Administrator shall be responsible for the formulation of policy relating to the Administration's programs which provide assistance to minority small business concerns and in the review of the Administration's execution of such programs in light of such policy.

Subsec. (c)(5). Pub. L. 96–302, § 121, inserted provisions other than subpar. (B)(ii) and incorporated partly in subpar. (A) and in subpar. (B)(ii) prior par. (5) provisions requiring Administration payment of interest on outstanding cash disbursements at close of each fiscal year into the miscellaneous receipts of the Treasury from par. (1) funds at rates that consider current aver-

age yields on outstanding interest-bearing marketable Federal debt obligations of comparable maturities as calculated for the September preceding the fiscal year.

1978—Subsec. (b). Pub. L. 95–507 substituted ''Associate Administrator for Minority Small Business and Capital Ownership Development'' for ''Associate Administrator for Minority Small Business''.

Subsec. (c)(1)(B), (2)(B). Pub. L. 95–315 inserted reference to section 636(*l*).

1977—Subsec. (c)(1). Pub. L. 95–89, §§101(a), 304, 401(1), struck out end text from cls. (A) and (B) reading '', including administrative expenses in connection with such functions''; inserted in cl. (A) reference to section 634(e); and inserted in cl. (A) and struck out from cl. (B) reference to section 636(b)(3).

Subsec. (c)(2). Pub. L. 95–89, §§201, 304, 401(2), inserted in cl. (A) reference to section 636(g); inserted in cl. (A) reference to section 634(e); and inserted in cl. (A) and struck out from cl. (B) reference to section 636(b)(3).

Subsec. (c)(3). Pub. L. 95–89, §101(b), struck out last sentence authorization of appropriations of capital for the funds in amounts necessary to carry out the functions of the Administration to remain available until expended.

Subsec. (c)(4). Pub. L. 95–89, §§101(c), 202, repealed provisions of par. (4) which limited the total amount of loans, guarantees, and other obligations, to be outstanding at any one time: under sections 636(a), (b)(3), (e), (h), (i) and 637(a) of this title to $7,400,000,000; under title III of the Small Business Investment Act of 1958 to $887,500,000; under title V of the Small Business Investment Act of 1958 to $525,000,000; and under section 636(i) of this title to $525,000,000; redesignated par. (5) as (4) and substituted reference to submission of reports to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives for the prior reference the Committees on Banking and Currency of the Senate and House of Representatives; substituted reference to transmission of business-type budgets to the Committees on Appropriations, the Senate Select Committee on Small Business, and the Committee on Small Business of the House of Representatives for prior reference to such transmission to the Congress; and deleted the second sentence providing that if at the close of the preceding calendar quarter the aggregate amount outstanding or committed by the Administration in carrying out its functions under the sections or titles referred to in former par. (4) exceeded 75 per centum of the total amount authorized to be outstanding under such sections or titles, the Administration's report shall include its recommendations for such additional authority as it deems appropriate.

Pub. L. 95–14 substituted ''$7,400,000,000'' for ''$6,000,000,000'', ''$525,000,000'' for ''$450,000,000'', and ''$887,500,000'' for ''$725,000,000''.

Subsec. (c)(5), (6). Pub. L. 95–89, §202, redesignated pars. (5) and (6) as (4) and (5), respectively.

1976—Subsec. (c)(6). Pub. L. 94–273 substituted ''September'' for ''June''.

1974—Subsec. (b). Pub. L. 93–386, §7, in fourth sentence increased from three to four the number of Associate Administrators authorized to be appointed and inserted fifth sentence authorizing one of the Associate Administrators at the time of appointment to be designated as Associate Administrator for Minority Small Business. As enacted section 7 of Pub. L. 93–386 amended the third sentence and inserted a fourth sentence to subsec. (b), however the amendment was executed to fourth sentence and the new sentence was inserted as a fifth sentence editorially since this would appear to be the probable intent of Congress.

Pub. L. 93–237, §8, inserted provisions that the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Administration and that the Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents in carrying out the programs administered by the Administration.

Subsec. (c)(1). Pub. L. 93–386, §2(a)(2), inserted references to sections 636(b)(8) and 636(i) and struck out reference to title IV of the Economic Opportunity Act of 1964.

Pub. L. 93–237, §3(b), substituted ''636(h)'' for ''636(g)'' in cl. (B).

Subsec. (c)(2). Pub. L. 93–386, §2(a)(2), inserted references to sections 636(b)(8) and 636(i) of this title and struck out reference to title IV of the Economic Opportunity Act of 1964.

Pub. L. 93–237, §3(b), substituted ''636(h)'' for ''636(g)'' in cl. (B).

Subsec. (c)(4). Pub. L. 93–386, §2(a)(3), in cl. (A) substituted ''636(i), and 637(a) of this title, shall not exceed $6,000,000,000'' for ''and 637(a) of this title, and title IV of the Economic Opportunity Act of 1964, shall not exceed $4,875,000,000'', in cl. (B) substituted ''$725,000,000'' for ''$556,250,000'', and in cl. (D) substituted ''section 636(i) of this title, shall not exceed $450,000,000'' for ''title IV of the Economic Opportunity Act of 1964 shall not exceed $381,250,000''.

Pub. L. 93–237, §§1, 3(b), substituted ''$4,875,000,000'' for ''$4,300,000,000'' and ''636(h)'' for ''636(g)'' in cl. (A), ''$556,250,000'' for ''$500,000,000'' in cl. (B), ''$525,000,000'' for ''$500,000,000'' in cl. (C) and ''$381,250,000'' for ''$350,000,000'' in cl. (D).

1972—Subsec. (c)(1). Pub. L. 92–595 inserted reference to section 636(g).

Pub. L. 92–500 made disaster loan fund available for financing functions performed under section 636(g) of this title.

Pub. L. 92–385, §2(b)(1), inserted reference to section 636(b)(7).

Subsec. (c)(2). Pub. L. 92–595 inserted reference to section 636(g).

Pub. L. 92–385, §2(b)(2), inserted reference to sections 636(b)(5), 636(b)(6), 636(b)(7).

Subsec. (c)(4). Pub. L. 92–595 inserted reference to section 636(g).

Pub. L. 92–320 substituted ''$4,300,000,000'', ''$500,000,000'', and ''$350,000,000'' for ''$3,100,000,000'', ''$450,000,000'' and ''$300,000,000'', respectively.

1971—Subsec. (c)(4)(A). Pub. L. 92–16 substituted ''$3,100,000,000'' for ''$2,200,000,000''.

1970—Subsec. (c)(1). Pub. L. 91–597 made disaster loan fund available for financing requirements imposed by section 636(b)(5) of this title relating to additions and alterations pursuant to the Egg Products Inspection Act, etc. See, also, 1969 Amendment note hereunder.

Pub. L. 91–596 made disaster loan fund available for financing functions under section 636(b)(6) of this title.

Subsec. (c)(4). Pub. L. 91–558 substituted ''$2,200,000,000'' for ''$1,900,000,000'' in cl. (A), ''$500,000,000'' for ''$300,000,000'' in cl. (C), and ''$300,000,000'' for ''$200,000,000'' in cl. (D).

1969—Subsec. (c)(1). Pub. L. 91–173 made disaster loan fund available for financing functions under section 636(b)(5) of this title, relating to loans to coal mine operators.

1968—Subsec. (a). Pub. L. 90–448 inserted ''the Trust Territory of the Pacific Islands,''.

1967—Subsec. (c)(4). Pub. L. 90–104, §102(1)–(4), substituted $1,900,000,000 for $1,400,000,000 in cl. (A), $450,000,000 for $400,000,000 in cl. (B), $300,000,000 for $200,000,000 in cl. (C), and $200,000,000 for $100,000,000 in cl. (D).

1966—Subsec. (b). Pub. L. 89–779 substituted ''a Deputy Administrator and three Associate Administrators (including the Associate Administrator specified in section 671 of this title)'' for ''three Deputy Administrators'' as the officers to be appointed by the Administrator to assist in the execution of the functions vested in the Administration, and inserted provision that 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 the Administrator.

Subsec. (c). Pub. L. 89–409, §1, increased by $125 million the appropriation authorization for the single SBA fund from $1,841 million to $1,966 million and the au-

thorization for outstanding loans and commitments for regular business loans, disaster loans, and prime contract authority from $1,375 million to $1,500 million.

Pub. L. 89–409, § 2, provided for a disaster loan fund and business loan and investment fund in place of one prior SBA fund, incorporated existing provisions in par. (2), provided for allocation of unexpended balances of appropriations for prior single fund and for an appropriation authorization in par. (3), removed disaster loans from any limitation, provided limitations in par. (4) of $1,400 million for regular business loans, displaced business disaster loans, trade adjustment loans, prime contract authority, and loans under title IV of the Economic Opportunity Act of 1964, $400 million for small business investment companies, $200 million for loans to State and local development companies, $100 million for loans under title IV of the Economic Opportunity Act of 1964, incorporated existing reporting provisions in par. (4), including additional requirement of inclusion of recommendations whenever 75 percent of any ceiling in outstanding obligations is exceeded, required establishment of business-type loans, and incorporated existing provisions in par. (6).

1965—Subsec. (c). Pub. L. 89–334 substituted ''$1,841,000,000'' for ''$1,721,000,000''.

Pub. L. 89–117 substituted ''$1,721,000,000'' for ''$1,716,000,000'' and inserted proviso that the limitation imposed by fifth sentence concerning the maximum aggregate permitted to be outstanding from the fund for functions under the Small Business Investment Act of 1958 be inapplicable to functions under title IV thereof.

Pub. L. 89–78 increased from $341,000,000 to $461,000,000 the limit on the aggregate permissible amount outstanding from the fund at any time for the exercise of the functions of the Administration under the Small Business Investment Act of 1958.

Pub. L. 89–59 inserted references to section 636(c)(2) in first sentence and in fourth sentence, where first appearing and in cl. (2) thereof, and increased the authorized appropriations to the revolving fund from $1,666,000,000 to $1,716,000,000 and the aggregate amount outstanding at any one time for regular business loans, disaster loans, and prime contract authority from $1,325,000,000 to $1,375,000,000.

1962—Subsec. (c). Pub. L. 87–550 increased the authorized appropriations to the revolving fund from $1,200,000,000 to $1,666,000,000, and the aggregate amount outstanding for purposes of sections 636(a), 636(b), and 637(a) of this title from $875,000,000 to $1,325,000,000, and for functions under the Small Business Investment Act of 1958 from $325,000,000 to $341,000,000 directed that appropriations to the revolving fund shall remain available until expended, required all repayments of loans and debentures, payments of interest, and other receipts arising out of transactions financed from the fund to be paid into the fund, and a report to Congressional committees whenever the aggregate amount outstanding for the purposes of sections 636(a) and 637(a) of this title exceeds $1,222,000,000, or for the purpose of section 636(b) of this title exceeds $103,000,000, changed the method of computing interest paid into miscellaneous receipts by substituting provisions requiring payment, following the close of each fiscal year, of interest on the outstanding cash disbursements from the fund, at rates determined by the Secretary of the Treasury, taking into consideration the current average yields on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities as calculated for the month of June preceding such fiscal year, for provisions which required payment of interest, at the close of each fiscal year, on the net amount of cash disbursements from advances at a rate determined by the Secretary of the Treasury, taking into consideration the current average rate on outstanding interest-bearing marketable public debt obligations of the United States of comparable maturities, and eliminated provisions which authorized advances from the revolving fund when requested by the Administration.

1961—Subsec. (c). Pub. L. 87–341, among other changes, substituted ''$1,200,000,000'' for ''$1,125,000,000'' wherever appearing, and ''$325,000,000'' for ''$250,000,000''.

Pub. L. 87–305 substituted ''$1,125,000,000'' for ''$1,020,000,000'' wherever appearing, and ''$725,000,000'' for ''$595,000,000''.

Pub. L. 87–198 substituted ''$1,020,000,000'' for ''$1,000,000,000'' wherever appearing, and ''$595,000,000'' for ''$575,000,000''.

Pub. L. 87–70 substituted ''$1,000,000,000'' for ''$975,000,000'' wherever appearing, and ''$150,000,000'' for ''$125,000,000''.

1959—Subsec. (c). Pub. L. 86–367 substituted ''$975,000,000'' for ''$900,000,000'' wherever appearing, and ''$575,000,000'' for ''$500,000,000''.

1958—Subsec. (c). Pub. L. 85–699 substituted ''$900,000,000'' for ''$650,000,000'' wherever appearing, and inserted provisions authorizing the revolving fund to be used in the exercise of the functions of the Administration under the Small Business Investment Act of 1958, and providing that not more than an aggregate of $250,000,000 shall be outstanding at any one time for the exercise of the functions under the Small Business Investment Act of 1958.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

TERMINATION DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. K, title I, § 132(c), Dec. 8, 2004, 118 Stat. 3453, provided that: ''The amendments made by this section [amending this section and section 637 of this title] are repealed on October 1, 2006.''

EFFECTIVE DATE OF 1996 AMENDMENT

Section 3 of div. D of Pub. L. 104–208 provided that: ''Except as otherwise expressly provided, this Act [probably should be ''division'', see Short Title of 1996 Amendment note set out under section 631 of this title] and the amendments made by this Act shall take effect on October 1, 1996.''

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 221(b) of Pub. L. 101–574 provided that: ''The amendments made by subsection (a) [amending this section] shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the date of the enactment of this Act [Nov. 15, 1990].''

Section 1(b) of Pub. L. 101–515 provided that: ''The provisions of subsection (a) of this section [amending this section] shall apply to any vacancy in the position of Deputy Administrator of the Small Business Administration after the effective date of this Act [Nov. 5, 1990].''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(C) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 7 of Pub. L. 98–362, as amended by Pub. L. 100–590, title I, § 131(a), Nov. 3, 1988, 102 Stat. 3004; Pub. L. 101–515, title V, § 11, Nov. 5, 1990, 104 Stat. 2145; Pub. L. 101–574, title II, § 212, Nov. 15, 1990, 104 Stat. 2821; Pub. L. 102–140, title VI, § 609(g), Oct. 28, 1991, 105 Stat. 826;

Pub. L. 102–366, title II, §225, Sept. 4, 1992, 106 Stat. 1001; Pub. L. 103–403, title IV, §401(b), Oct. 22, 1994, 108 Stat. 4190, provided that:

''(a) This Act [amending this section and sections 632 and 637 of this title and enacting provisions set out as notes under this section and sections 631 and 637 of this title] shall take effect on October 1, 1984.

''(b) The amendments made to section 4(b)(3) of the Small Business Act [15 U.S.C. 633(b)(3)] by section 3 of this Act are repealed on October 1, 1988. The amendments made to section 8(b)(1)(A) of the Small Business Act [15 U.S.C. 637(b)(1)(A)] by section 5(a)(2) of this Act are repealed on October 1, 1994. Nothing in this section shall preclude the Administrator from continuing such committee under the authority of section 8(b)(3) of the Small Business Act and the Federal Advisory Committee Act [5 U.S.C. App.].''

[Section 401(b) of Pub. L. 103–403, which directed that section 7(b) of Pub. L. 98–362, set out above, be amended in the second sentence by striking out ''and the amendments made to section 8(b)(1)(A) of the Small Business Act by section 5(a)(2) of this Act are'' and inserting ''is'', could not be executed, because the language sought to be struck out begins with ''The amendments'' and not ''and the amendments'', and because the amendment would result in an incomplete sentence.]

Amendment by Pub. L. 98–270 effective Oct. 1, 1983, see section 313 of Pub. L. 98–270, set out as an Effective Date of 1984 Amendments note under section 632 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by sections 1908 and 1913(b) of Pub. L. 97–35 effective Oct. 1, 1981, and amendment by section 1915 of Pub. L. 97–35 effective Aug. 13, 1981, but not to affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 106 of Pub. L. 95–89 provided that: ''This title [amending this section, sections 636, 694, 694–2, and 694c of this title, and provisions set out as a note under section 631 of this title] shall become effective on October 1, 1977.''

EFFECTIVE DATE OF 1970 AMENDMENTS

For effective date of amendment by Pub. L. 91–597, see section 29 of Pub. L. 91–597, set out as a note under section 1031 of Title 21, Food and Drugs.

Amendment by Pub. L. 91–596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91–596, set out as a note under section 651 of Title 29, Labor.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 2 of Pub. L. 89–408 provided that the amendment made by that section is effective July 1, 1966.

TERMINATION OF TRUST TERRITORY OF THE PACIFIC ISLANDS

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

TRANSFER OF FUNCTIONS

Functions, powers, and duties of Office of Audits and Investigations in Small Business Administration transferred to Office of Inspector General in Small Business Administration, as established by Pub. L. 95–452, §2, Oct. 12, 1978, 92 Stat. 1101, set out in the Appendix to Title 5, Government Organization and Employees. See section 9(a)(1)(T) of Pub. L. 95–452 set out in the Appendix to Title 5.

Loan Policy Board, provided for in subsec. (d) of this section, abolished and functions, including functions of chairman and other officers, transferred to Administrator of Small Business Administration by sections 11(b) and 13(a) of Reorg. Plan No. 4 of 1965, eff. July 27, 1965, 30 F.R. 9353, 79 Stat. 1321, set out in the Appendix to Title 5.

ADMINISTRATOR'S ORDER

Pub. L. 106–50, title VII, §701, Aug. 17, 1999, 113 Stat. 249, provided that: ''The Administrator of the Small Business Administration shall strengthen and reissue the Administrator's order regarding the third sentence of section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)), relating to nondiscrimination and special considerations for veterans, and take all necessary steps to ensure that its provisions are fully and vigorously implemented.''

COMPLETION OF PLANNING FOR LOAN MONITORING SYSTEM

Pub. L. 105–135, title II, §233, Dec. 2, 1997, 111 Stat. 2607, provided that:

''(a) IN GENERAL.—The Administrator shall perform and complete the planning needed to serve as the basis for funding the development and implementation of the computerized loan monitoring system, including—

''(1) fully defining the system requirement using on-line, automated capabilities to the extent feasible;

''(2) identifying all data inputs and outputs necessary for timely report generation;

''(3) benchmark loan monitoring business processes and systems against comparable industry processes and, if appropriate, simplify or redefine work processes based on these benchmarks;

''(4) determine data quality standards and control systems for ensuring information accuracy;

''(5) identify an acquisition strategy and work increments to completion;

''(6) analyze the benefits and costs of alternatives and use to demonstrate the advantage of the final project;

''(7) ensure that the proposed information system is consistent with the agency's information architecture; and

''(8) estimate the cost to system completion, identifying the essential cost element.

''(b) REPORT.—

''(1) IN GENERAL.—On the date that is 6 months after the date of enactment of this Act [Dec. 2, 1997], the Administrator shall submit a report on the progress of the Administrator in carrying out subsection (a) to—

''(A) the Committees; and

''(B) the Comptroller General of the United States.

''(2) EVALUATION.—Not later than 28 days after receipt of the report under paragraph (1)(B), the Comptroller General of the United States shall—

''(A) prepare a written evaluation of the report for compliance with subsection (a); and

''(B) submit the evaluation to the Committees.

''(3) LIMITATION.—None of the funds provided for the purchase of the loan monitoring system may be obligated or expended until 45 days after the date on which the Committees and the Comptroller General of the United States receive the report under paragraph (1).''

ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT

Section 401(b) of Pub. L. 100–656, as amended by Pub. L. 101–37, §11(b), June 15, 1989, 103 Stat. 73, provided that: ''The position of Associate Administrator for Minority Small Business and Capital Ownership Development referred to in paragraph (1) of section 4(b) of the Small Business Act [15 U.S.C. 633(b)(1)] shall be a career reserved position.''

AVAILABILITY OF FUNDS

Pub. L. 100–71, title I, July 11, 1987, 101 Stat. 396, provided in part that: ''hereafter, notwithstanding any

law, rule or regulation, moneys in any fund established by the Small Business Act [15 U.S.C. 631 et seq.] which are not needed for current operations shall remain in such funds and shall be available solely to carry out the provisions and purposes of programs operated from such funds pursuant to law as provided in appropriations Acts.''

FINDING AND PURPOSE OF 1984 AMENDMENT

Section 2 of Pub. L. 98–362 provided that:

''(a) The Congress hereby finds that—

''(1) there is increased dependency on, and proliferation of, information technology (including computers, data networks, and other communication devices) in the small business community;

''(2) such technology has permitted an increase in criminal activity against small business;

''(3) small businesses in particular frequently lack the education and awareness of computer security techniques and technologies which would enable them to protect their computer systems from unauthorized access and the manipulation or destruction of their computer hardware, software, and stored data;

''(4) profitmaking organizations have substantial expertise in computer technology, communications, and management assistance that is not otherwise available; and

''(5) the use of this expertise in the Small Business Administration's training delivery system would improve substantially the quantity and quality of the agency's management assistance programs.

''(b) The purposes of this Act [amending this section and sections 632 and 637 of this title and enacting provisions set out as notes under this section and sections 631 and 637 of this title] are—

''(1) to improve the management by small businesses of their information technology,

''(2) to educate and encourage small businesses to protect such technology from intentional or unintentional manipulation or destruction; and

''(3) to permit cooperation with profitmaking organizations in providing management assistance to small business.''

AUDIT BY GENERAL ACCOUNTING OFFICE OF SMALL BUSINESS ADMINISTRATION; REPORT TO CONGRESS

Section 13 of Pub. L. 93–386 directed General Accounting Office to conduct a full-scale audit of Small Business Administration, including all field offices and to submit audit to House and Senate not later than six months from Aug. 23, 1974.

NONAVAILABILITY OF UNOBLIGATED FUNDS AFTER JUNE 30, 1974

Section 1 of Pub. L. 93–237 provided in part that any additional amounts authorized by Pub. L. 93–237 [amending this section, sections 636 and 639 of this title, section 1961 of Title 7, Agriculture, and section 3142–1 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section, section 636 of this title, and sections 1961 and 1969 of Title 7] which were not obligated by June 30, 1974, were no longer to be available after that date.

ADDITIONAL CAPITAL FOR REVOLVING FUND

The following acts appropriated additional capital:

1965—$76,000,000—Pub. L. 89–309, ch. IX, Oct. 31, 1965, 79 Stat. 1151.

$84,000,000—Pub. L. 89–309, ch. IX, Oct. 31, 1965, 79 Stat. 1151 [effective only upon enactment into law of authorizing legislation].

$150,000,000—Pub. L. 89–164, title V, Sept. 2, 1965, 79 Stat. 641.

$100,000,000—Pub. L. 89–16, title I, ch. IX, Apr. 30, 1965, 79 Stat. 92.

1964—$45,000,000—Pub. L. 88–635, ch. IX, Oct. 7, 1964, 78 Stat. 1032.

1963—$90,000,000—Pub. L. 88–245, title V, Dec. 30, 1963, 77 Stat. 798.

1962—$300,000,000—Pub. L. 87–843, title V, Oct. 18, 1962, 76 Stat. 1102.

$40,000,000—Pub. L. 87–545, title I, July 25, 1962, 76 Stat. 213.

1961—$160,000,000—Pub. L. 87–332, Sept. 30, 1961, 75 Stat. 742.

$20,000,000—Pub. L. 87–125, title IV, Aug. 3, 1961, 75 Stat. 281.

1960—$50,000,000—Pub. L. 86–451, title III, May 13, 1960, 74 Stat. 102.

1959—$150,000,000—Pub. L. 86–88, title III, July 13, 1959, 73 Stat. 209.

1958—$200,000,000—Pub. L. 85–766, ch. II, Aug. 27, 1958, 72 Stat. 867.

$20,000,000—Pub. L. 85–457, June 13, 1958, 72 Stat. 186.

1957—$100,000,000—Pub. L. 85–170, ch. II, Aug. 28, 1957, 71 Stat. 428.

$45,000,000—Pub. L. 85–19, ch. I, Apr. 20, 1957, 71 Stat. 16.

1956—$50,000,000—Act June 20, 1956, ch. 415, title III, 70 Stat. 325.

BUSINESS LOAN AND INVESTMENT FUND; INCREASE IN FINANCING FUNCTIONS; MONTHLY REPORTS TO CONGRESS

Pub. L. 91–151, title III, Dec. 23, 1969, 83 Stat. 378, provided that: ''The Small Business Administration shall promptly increase the level of its financing functions utilizing the business loan and investment fund established under section 4(c)(1)(B) of the Small Business Act (15 U.S.C. 633(c)(1)(B)) [subsec. (c)(1)(B) of this section] by $70,000,000 above the level prevailing at the time of enactment of this Act [Dec. 23, 1969]. The Small Business Administration shall submit to Congress a monthly report of its implementation of this section.''

TRANSFER OF FUNDS FOR TRADE ADJUSTMENT LOANS

Section 3(b) of Pub. L. 89–409 provided in part that any unexpended balances of appropriations heretofore appropriated for the purposes of such section [former section 637a of this title] were transferred to the business loan and investment fund established by section 4(c)(1) of the Small Business Act [subsec. (c)(1) of this section].

Such transfer of funds as effective July 1, 1966, see section 3(c) of Pub. L. 89–409, set out as Effective Date of 1966 Amendment note under section 636 of this title.

## § 634. General powers

### (a) Seal; appointment and compensation of personnel; use of other services and facilities

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

### (b) Powers of Administrator

In the performance of, and with respect to, the functions, powers, and duties vested in him by this chapter the Administrator may—

(1) sue and be sued in any court of record of a State having general jurisdiction, or in any

United States district court, and jurisdiction is conferred upon such district court to determine such controversies without regard to the amount in controversy; but no attachment, injunction, garnishment, or other similar process, mesne or final, shall be issued against the Administrator or his property;

(2) under regulations prescribed by him, assign or sell at public or private sale, or otherwise dispose of for cash or credit, in his discretion and upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any evidence of debt, contract, claim, personal property, or security assigned to or held by him in connection with the payment of loans granted under this chapter, and to collect or compromise all obligations assigned to or held by him and all legal or equitable rights accruing to him in connection with the payment of such loans until such time as such obligations may be referred to the Attorney General for suit or collection;

(3) deal with, complete, renovate, improve, modernize, insure, or rent, or sell for cash or credit upon such terms and conditions and for such consideration as the Administrator shall determine to be reasonable, any real property conveyed to or otherwise acquired by him in connection with the payment of loans granted under this chapter;

(4) pursue to final collection, by way of compromise or otherwise, all claims against third parties assigned to the Administrator in connection with loans made by him. This shall include authority to obtain deficiency judgments or otherwise in the case of mortgages assigned to the Administrator. Section 5 of title 41 shall not be construed to apply to any contract of hazard insurance or to any purchase or contract for services or supplies on account of property obtained by the Administrator as a result of loans made under this chapter if the premium therefor or the amount thereof does not exceed $1,000. The power to convey and to execute in the name of the Administrator deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real property or any interest therein acquired by the Administrator pursuant to the provisions of this chapter may be exercised by the Administrator or by any officer or agent appointed by him without the execution of any express delegation of power or power of attorney. Nothing in this section shall be construed to prevent the Administrator from delegating such power by order or by power of attorney, in his discretion, to any officer or agent he may appoint;

(5) acquire, in any lawful manner, any property (real, personal, or mixed, tangible or intangible), whenever deemed necessary or appropriate to the conduct of the activities authorized in sections 636(a) and 636(b) of this title;

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

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

(8) pay the transportation expenses and per diem in lieu of subsistence expenses, in accordance with subchapter I of chapter 57 of title 5, for travel of any person employed by the Administration to render temporary services not in excess of six months in connection with any disaster referred to in section 636(b) of this title from place of appointment to, and while at, the disaster area and any other temporary posts of duty and return upon completion of the assignment: *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities;

(9) accept the services and facilities of Federal, State, and local agencies and groups, both public and private, and utilize such gratuitous services and facilities as may, from time to time, be necessary, to further the objectives of section 636(b) of this title;

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

(11) make such investigations as he deems necessary to determine whether a recipient of or participant in any assistance under this chapter or any other person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this chapter, or of any rule or regulation under this chapter, or of any order issued under this chapter. The Administration shall permit any person to file with it a statement in writing, under oath or otherwise as the Administration shall determine, as to all the facts and circumstances concerning the matter to be investigated. For the purpose of any investigation, the Administration is empowered to administer oaths and affirmations, subpena witnesses, compel their attendance, take evidence, and require the production of any books, papers, and documents which are relevant to the inquiry. Such attendance of witnesses and the production of any such records may be required from any place in the United States. In case of contumacy by, or re-

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

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

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

(B) not to exceed $300 for loan assumptions;

(C) not to exceed 1 percent of the amount of requested financings under title III of the Small Business Investment Act of 1958 [15 U.S.C. 681 et seq.] for which the applicant requests a commitment from the Administration for funding during the following year; and

(D) to recover the direct, incremental cost involved in the production and dissemination of compilations of information produced by the Administration under the authority of this chapter and the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.];

(13) collect, retain and utilize, subject to approval in appropriations Acts, any amounts collected by fiscal transfer agents and not used by such agent as payment of the cost of loan pooling or debenture servicing operations, except that amounts collected under this paragraph and paragraph (12) shall be utilized solely to facilitate the administration of the program that generated the excess amounts; and

(14) require any lender authorized to make loans under section 636 of this title to pay examination and review fees, which shall be deposited in the account for salaries and expenses of the Administration, and shall be available for the costs of examinations, reviews, and other lender oversight activities.

**(c) Procurement of experts and consultants; compensation and expenses**

To such extent as he finds necessary to carry out the provisions of this chapter, the Administrator is authorized to procure the temporary (not in excess of one year) or intermittent services of experts or consultants or organizations thereof, including stenographic reporting services, by contract or appointment, and in such cases such services shall be without regard to the civil-service and classification laws and, except in the case of stenographic reporting services by organizations, without regard to section 5 of title 41. Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5.

**(d) Safety deposit box rentals**

Section 3324(a) and (b) of title 31 shall not apply to prepayments of rentals made by the Administration on safety deposit boxes used by the Administration for the safeguarding of instruments held as security for loans or for the safeguarding of other documents.

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

(1) Subject to the requirements and conditions contained in this subsection, upon application by a small business concern which is the recipient of a loan made under this chapter, the Administration may undertake the small business concern's obligation to make the required payments under such loan or may suspend such obligation if the loan was a direct loan made by the Administration. While such payments are being made by the Administration pursuant to the undertaking of such obligation or while such obligation is suspended, no such payment with respect to the loan may be required from the small business concern.

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

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

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

(C) the small business concern executes an agreement in writing satisfactory to the Administration as provided by paragraph (4).

(3) Notwithstanding the provisions of sections 636(a)(4)(C) and 636(i)(1) of this title, the Administration may extend the maturity of any loan on which the Administration undertakes or suspends the obligation pursuant to this subsection for a corresponding period of time.

(4)(A) Prior to the undertaking or suspension by the Administration of any small business concern's obligation under this subsection, the Administration, consistent with the purposes sought to be achieved herein, shall require the small business concern to agree in writing to

repay to it the aggregate amount of the payments which were required under the loan during the period for which such obligation was undertaken or suspended, either—

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

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

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

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

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

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

(1) The guaranteed portion of any loan made pursuant to this chapter may be sold by the lender, and by any subsequent holder, consistent with regulations on such sales as the Administration shall establish, subject to the following limitations:

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

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

(C) each loan, except each loan made under section 636(a)(14) of this title, shall have been fully disbursed to the borrower prior to any sale.

(2) After a loan is sold in the secondary market, the lender shall remain obligated under its guarantee agreement with the Administration, and shall continue to service the loan in a manner consistent with the terms and conditions of such agreement.

(3) The Administration shall develop such procedures as are necessary for the facilitation, administration, and promotion of secondary market operations, and for assessing the increase of small business access to capital at reasonable rates and terms as a result of secondary market operations. Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 636(a) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.

(4) Nothing in this subsection or subsection (g) of this section shall be interpreted to impede or extinguish the right of the borrower or the successor in interest to such borrower to prepay (in whole or in part) any loan made pursuant to section 636(a) of this title, the guaranteed portion of which may be included in such trust or pool, or to impede or extinguish the rights of any party pursuant to section 636(a)(6)(C) of this title or subsection (e) of this section.

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

(1) The Administration is authorized to issue trust certificates representing ownership of all or a fractional part of the guaranteed portion of one or more loans which have been guaranteed by the Administration under this chapter, or under section 696 of this title: *Provided*, That such trust certificates shall be based on and backed by a trust or pool approved by the Administration and composed solely of the entire guaranteed portion of such loans.

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

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

(4)(A) The Administration may collect a fee for any loan guarantee sold into the secondary market under subsection (f) of this section in an amount equal to not more than 50 percent of the portion of the sale price that exceeds 110 percent of the outstanding principal amount of the portion of the loan guaranteed by the Administration. Any such fee imposed by the Administration shall be collected by the Administration or

by the agent which carries out on behalf of the Administration the central registration functions required by subsection (h) of this section and shall be paid to the Administration and used solely to reduce the subsidy on loans guaranteed under section 636(a) of this title: *Provided*, That such fee shall not be charged to the borrower whose loan is guaranteed: and, *Provided further*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2)[1] of this section.

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

(C) The Administration may contract with an agent to carry out, on behalf of the Administration, the assessment and collection of the annual fee established under section 636(a)(23) of this title. The agent may receive, as compensation for services, any interest earned on the fee while in the control of the agent before the time at which the agent is contractually required to remit the fee to the Administration.

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

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

**(h) Central registration of loans and trust certificates; contracts with agent; disclosures by sellers of guaranteed portions of loans; regulation of brokers and dealers; electronic registration**

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

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

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

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

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

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

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

(Pub. L. 85–536, § 2[5], July 18, 1958, 72 Stat. 385; Pub. L. 87–305, § 4, Sept. 26, 1961, 75 Stat. 666; Pub. L. 87–367, title I, § 103(3), Oct. 4, 1961, 75 Stat. 787; Pub. L. 92–310, title II, § 224(a), June 6, 1972, 86 Stat. 206; Pub. L. 93–386, §§ 3(1), 10, Aug. 23, 1974, 88 Stat. 745, 749; Pub. L. 94–305, title II, § 208, June 4, 1976, 90 Stat. 671; Pub. L. 95–89, title III, § 303, Aug. 4, 1977, 91 Stat. 558; Pub. L. 95–510, § 103, Oct. 24, 1978, 92 Stat. 1781; Pub. L. 96–302, title I, § 114, July 2, 1980, 94 Stat. 838; Pub. L. 98–352, § 2, July 10, 1984, 98 Stat. 329; Pub. L. 100–590, title I, § 113, Nov. 3, 1988, 102 Stat. 2997; Pub. L. 102–140, title VI, § 609(a), Oct. 28, 1991, 105 Stat. 825; Pub. L. 102–564, title III, § 307(d), Oct. 28, 1992, 106 Stat. 4264; Pub. L. 103–81, § 3(a), Aug. 13, 1993, 107 Stat. 780; Pub. L. 103–282, § 2, July 22, 1994, 108 Stat. 1422; Pub. L. 103–403, title VI, § 602, Oct. 22, 1994, 108 Stat. 4202; Pub. L. 104–36, § 4(b), Oct. 12, 1995, 109 Stat. 297; Pub. L. 104–208, div. D, title I, § 103(e), title II, §§ 205(a), 208(i)(1), Sept. 30, 1996, 110 Stat. 3009–727, 3009–738, 3009–747; Pub. L. 106–554, § 1(a)(9) [title II, § 209], Dec. 21, 2000, 114 Stat. 2763, 2763A–683; Pub. L. 108–306, § 3, Sept. 24, 2004, 118 Stat. 1131; Pub. L. 108–447, div. K, title I, § 131, Dec. 8, 2004, 118 Stat. 3452.)

REFERENCES IN TEXT

The civil service laws, referred to in subsecs. (a) and (c), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of Title 5.

The classification laws, referred to in subsecs. (a) and (c), are set forth in chapter 51 and subchapter III of chapter 53 of Title 5.

The Small Business Investment Act of 1958, referred to in subsec. (b)(12)(C), (D), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of this title. Title III of the Act is classified generally to subchapter III (§ 681 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

Subsection (h)(2) of this section, referred to in subsec. (g)(4)(A), was redesignated subsec. (h)(1)(B) by Pub. L. 104–208, div. D, title II, § 205(a)(1), (2), Sept. 30, 1996, 110 Stat. 3009–738.

CODIFICATION

In subsec. (b)(8), ''subchapter I of chapter 57 of title 5'' substituted for ''the Travel Expense Act of 1949'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

In subsec. (d), ''Section 3324(a) and (b) of title 31'' substituted for ''Section 3648 of the Revised Statutes (31 U.S.C. 529)'' on authority of Pub. L. 97–258, § 4(b), Sept.

[1] See References in Text note below.

13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

PRIOR PROVISIONS

Prior similar provisions were contained in section 205 of act July 30, 1953, ch. 282, title II, 67 Stat. 234, as amended by act Aug. 9, 1955, ch. 628, §4, 69 Stat. 547, which was classified to this section. See Codification note set out under section 631 of this title.

AMENDMENTS

2004—Subsec. (b)(14). Pub. L. 108–447 added par. (14).

Subsec. (g)(4)(C). Pub. L. 108–306, §3(1), added subpar. (C).

Subsec. (h)(2), (3). Pub. L. 108–306, §3(2), added par. (2) and redesignated former par. (2) as (3).

2000—Subsec. (f)(1)(C). Pub. L. 106–554 amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''each loan shall have been fully disbursed to the borrower prior to any sale.''

1996—Subsec. (b)(7). Pub. L. 104–208, §208(i)(1), substituted '': *Provided*, That with respect to deferred participation loans, the Administrator may, in the discretion of and pursuant to regulations promulgated by the Administrator, authorize participating lending institutions to take actions relating to loan servicing on behalf of the Administrator, including determining eligibility and creditworthiness and loan monitoring, collection, and liquidation'' for '': *Provided*, That nothing herein shall be construed as authorizing the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but with respect to deferred participation loans he may authorize participating lending institutions, in his discretion pursuant to regulations promulgated by him, to take such actions on his behalf, including, but not limited to the determination of eligibility and creditworthiness, and loan monitoring, collection and liquidation''.

Subsec. (f)(3). Pub. L. 104–208, §103(e), inserted at end ''Beginning on March 31, 1997, the sale of the unguaranteed portion of any loan made under section 636(a) of this title shall not be permitted until a final regulation that applies uniformly to both depository institutions and other lenders is promulgated by the Administration setting forth the terms and conditions under which such sales can be permitted, including maintenance of appropriate reserve requirements and other safeguards to protect the safety and soundness of the program.''

Subsec. (h). Pub. L. 104–208, §205(a), designated existing provisions as par. (1), redesignated former pars. (1) to (4) as subpars. (A) to (D), respectively, of par. (1), in subpar. (A) substituted ''(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section;'' for ''(A) provide for a central registration of all loans and trust certificates sold pursuant to subsections (f) and (g) of this section. Such central registration shall include, with respect to each sale, an identification of each lender who has sold the loan; the interest rate paid by the borrower to the lender; the lender's servicing fee; whether the loan is for a fixed rate or variable rate; an identification of each purchaser of the loan or trust certificate; the price paid by the purchaser for the loan or trust certificate; the interest rate paid on the loan or trust certificate; the fees of an agent for carrying out the functions described in paragraph (2) below; and such other information as the Administration deems appropriate;'', and added par. (2).

1995—Subsec. (g)(4)(A). Pub. L. 104–36 substituted first sentence for former first sentence which read as follows: ''The Administration may collect the following fees for loan guarantees sold into the secondary market pursuant to the provisions of subsection (f) of this section: an amount equal to (A) not more than 4/10 of one percent per year of the outstanding principal amount of the portion of such loan guaranteed by the Administration, and (B) not more than 50 percent of the portion of the sale price which is in excess of 110 percent of the outstanding principal amount of the portion of such loan guaranteed by the Administration.'', and substituted ''such fee'' for ''such fees'' in two places in second sentence.

1994—Subsec. (b)(8). Pub. L. 103–282 inserted '': *Provided*, That the Administrator may extend the six-month limitation for an additional six months if the Administrator determines the extension is necessary to continue efficient disaster loan making activities'' before semicolon at end.

Subsec. (b)(12), (13). Pub. L. 103–403 added pars. (12) and (13).

1993—Subsec. (g)(4). Pub. L. 103–81 added par. (4) and struck out former par. (4) which read as follows: ''The Administration shall not collect any fee for any guarantee under this subsection: *Provided*, That nothing herein shall preclude any agent of the Administration from collecting a fee approved by the Administration for the functions described in subsection (h)(2) of this section.''

1992—Subsec. (f)(4). Pub. L. 102–564 substituted ''section 636(a)(6)(C) of this title or subsection (e) of this section'' for ''subsection (e) of this section or section 636(a)(6) or 636(a)(8) of this title''.

1991—Subsec. (g)(1). Pub. L. 102–140 substituted ''or under section 696 of this title'' for ''except separate trust certificates shall be issued for loans approved under section 636(a)(13) of this title''.

1988—Subsec. (g)(1). Pub. L. 100–590 substituted ''except separate trust certificates shall be issued for loans approved'' for ''except those''.

1984—Subsecs. (f) to (h). Pub. L. 98–352 added subsecs. (f) to (h).

1980—Subsec. (b)(7). Pub. L. 96–302 prohibited an interpretation that authorized the Administrator to contract or otherwise delegate his responsibility for loan servicing to other than Administration personnel, but sanctioned, with respect to deferred participation loans, authority for participating lending institutions to take action on behalf of the Administrator determining eligibility and creditworthiness, loan monitoring, collection, and liquidation, etc.

1978—Subsec. (c). Pub. L. 95–510 substituted ''Any individual so employed may be compensated at a rate not in excess of the daily equivalent of the highest rate payable under section 5332 of Title 5, including travel time, and, while such individual is away from his or her home or regular place of business, he or she may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of Title 5'' for ''Any individual so employed may be compensated at a rate not in excess of $50 per diem, and, while such individual is away from his home or regular place of business, he may be allowed transportation and not to exceed $15 per diem in lieu of subsistence and other expenses''.

1977—Subsec. (e). Pub. L. 95–89 added subsec. (e).

1976—Subsec. (e). Pub. L. 94–305 struck out subsec. (e) which provided for the appointment, by the Administrator, of the Chief Counsel for Advocacy who would serve as a focal point for complaints and suggestions, counsel small businessmen, develop proposals for change, represent interest of small businesses before federal agencies and enlist the cooperation of public and private agencies. See sections 634a to 634g of this title.

1974—Subsec. (b)(10), (11). Pub. L. 93–386, §3(1), added pars. (10) and (11).

Subsec. (e). Pub. L. 93–386, §10, added subsec. (e).

1972—Subsec. (a). Pub. L. 92–310 struck out provisions which authorized the Administrator to provide bonds for officers, employees, attorneys, and agents.

1961—Subsec. (a). Pub. L. 87–367 struck out authorization for fifteen additional positions in grades 16, 17, and 18 of the General Schedule of the Classification Act of 1949.

Subsec. (d). Pub. L. 87–305 added subsec. (d).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by sections 103 and 205 of Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

Section 208(j) of div. D of Pub. L. 104–208 provided that: ''This section [amending this section, sections 80a–18, 662, 681 to 683, 687, 687b, 687d, 687k to 687m, and 697f of this title, and section 1431 of Title 12, Banks and Banking, repealing sections 687i and 687j of this title, enacting provisions set out as notes under sections 681 and 683 of this title, and amending provisions set out as a note under section 631 of this title] and the amendments made by this section shall become effective on the date of enactment of this Act [Sept. 30, 1996].''

EFFECTIVE DATE OF 1995 AMENDMENT

Section 8 of Pub. L. 104–36 provided that:

''(a) IN GENERAL.—Except as provided in subsection (b), the amendments made by this Act [see Short Title of 1995 Amendment note set out under section 631 of this title] do not apply with respect to any loan made or guaranteed under the Small Business Act [15 U.S.C. 631 et seq.] or the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] before the date of enactment of this Act [Oct. 12, 1995].

''(b) EXCEPTIONS.—The amendments made by this Act apply to a loan made or guaranteed under the Small Business Act or the Small Business Investment Act of 1958 before the date of enactment of this Act [Oct. 12, 1995], if the loan is refinanced, extended, restructured, or renewed on or after the date of enactment of this Act.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 3(b) of Pub. L. 103–81 provided that: ''Any new fees imposed by the Administration pursuant to the authority conferred by subsection (a) [amending this section] shall be applicable only to loans initially sold in the secondary market pursuant to the provisions of section 5(f) of the Small Business Act [subsec. (f) of this section] after August 31, 1993.''

Section 7 of Pub. L. 103–81 which provided that sections 3 and 5 of Pub. L. 103–81, amending this section and section 636 of this title and enacting provisions set out as notes under this section and section 636 of this title, were repealed on Sept. 30, 1996, was repealed by Pub. L. 104–208, div. D, title I, § 109(a), Sept. 30, 1996, 110 Stat. 3009–733, effective Sept. 29, 1996.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 105 of Pub. L. 95–510 provided that: ''This Act [amending this section and sections 636 and 637 of this title and repealing sections 5031, 5032, and 5083 of Title 42, The Public Health and Welfare] shall be effective October 1, 1979.''

REGULATIONS

Section 3 of Pub. L. 98–352 provided that:

''(a) Within ninety days after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall develop and promulgate final rules and regulations to implement the central registration provisions provided for in section 5(h)(1) of the Small Business Act [15 U.S.C. 634(h)(1)], and shall contract with an agent for an initial period of not to exceed two years to carry out the functions provided for in section 5(h)(2) of such Act.

''(b) Within nine months after the date of enactment of this Act [July 10, 1984], the Small Business Administration shall consult with representatives of appropriate Federal and State agencies and officials, the securities industry, financial institutions and lenders, and small business persons, and shall develop and promulgate final rules and regulations to implement this Act [amending sections 633, 634, and 639 of this title and enacting provisions set out as notes under sections 631 and 634 of this title] other than as provided for in subsection (a).

''(c) The Small Business Administration shall not implement any of the provisions under section 5(g) of the Small Business Act, as amended [15 U.S.C. 634(g)], until final rules and regulations become effective.''

ASSET SALES

Pub. L. 105–135, title V, § 505, Dec. 2, 1997, 111 Stat. 2624, provided that: ''In connection with the Administration's implementation of a program to sell to the private sector loans and other assets held by the Administration, the Administration shall provide to the Committees a copy of the draft and final plans describing the sale and the anticipated benefits resulting from such sale.''

PREFERRED LENDER STANDARD REVIEW PROGRAM

Section 103(h) of div. D of Pub. L. 104–208 provided that: ''Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], the Administrator shall commence a standard review program for the Preferred Lender Program established by section 5(b)(7) of the Small Business Act (15 U.S.C. 634(b)(7)), which shall include annual or more frequent assessments of the participation of the lender in the program, including defaults, loans, and recoveries of loans made by that lender under the authority of this section. The Administrator shall require such standard review for each new entrant to the Preferred Lender Program.''

STUDY AND REPORT REGARDING 1993 AMENDMENTS TO IMPOSE SECONDARY MARKET FEES AND TO REDUCE LOAN GUARANTEE PERCENTAGES

Pub. L. 103–81, § 6, Aug. 13, 1993, 107 Stat. 782, provided that: ''The Administration shall study, monitor and evaluate the impact of the amendments made by sections 3 and 5 of this Act [amending this section and section 636 of this title] on the ability of small business concerns and small business concerns owned and controlled by minorities and women, to obtain financing and the impact of such sections on the effectiveness, viability and growth of the secondary market authorized by section 5(f) of the Small Business Act [subsec. (f) of this section]. Not later than 16 months after the date of enactment [Aug. 13, 1993], and annually thereafter, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a report containing the Administration's findings and recommendations on such impact, specifically including changes in the interest rates on financings provided to small business concerns and small business concerns owned and controlled by minorities and women, through the use of the secondary market. The Administration shall segregate such findings and recommendations in the study according to the ethnic and gender components in these categories. Solely for the purposes of the study authorized herein, the term 'small business concerns owned and controlled by minorities', includes businesses owned and controlled by individuals belonging to one of the designated groups listed in section 8(d)(3)(C) of the Small Business Act [15 U.S.C. 637(d)(3)(C)].''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

VIABILITY OF SECONDARY MARKETS

Pub. L. 102–366, title II, § 226, Sept. 4, 1992, 106 Stat. 1001, provided that: ''The Administrator of the Small Business Administration is authorized and directed to take such actions in the awarding of contracts as is deemed necessary to assure the continued long-term viability of the secondary markets in loans, debentures or other securities guaranteed by the Administration.''

SMALL BUSINESS LOAN SECONDARY MARKET STUDY

Pub. L. 102–366, title III, § 311, Sept. 4, 1992, 106 Stat. 1005, directed Secretary of the Treasury, Director of Congressional Budget Office, and Chairman of Securities and Exchange Commission, in consultation with Administrator of Small Business Administration, to conduct a study of potential benefits of, and legal, regulatory, and market-based barriers to, developing a secondary market for loans to small businesses, specified considerations to be included in the study, and required that, not later than 1 year after Sept. 4, 1992, a report be submitted to Congress on results of the study, including recommendations for legislation to facilitate development of a secondary market for loans to small businesses.

APPROPRIATIONS NOT AUTHORIZED

Section 6 of Pub. L. 98–352 provided that: ''This Act [amending this section and sections 633 and 639 of this title and enacting provisions set out as notes under this section and section 631 of this title] does not authorize the appropriation of any funds.''

SMALL BUSINESS PROTECTION

Pub. L. 90–104, title III, §§ 301–303, Oct. 11, 1967, 81 Stat. 272, authorized Administrator of Small Business Administration to conduct a special study of impact on small business concerns of robbery, burglary, shoplifting, vandalism, and other criminal activities, and report to President and to Congress results of study, including such recommendations he deemed appropriate for administrative and legislative action, within one year after Oct. 11, 1967.

## § 634a. Office of Advocacy within Small Business Administration; Chief Counsel for Advocacy

There is established within the Small Business Administration an Office of 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.

(Pub. L. 94–305, title II, § 201, June 4, 1976, 90 Stat. 668.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

## § 634b. Primary functions of Office of Advocacy

The primary functions of the Office of Advocacy shall be to—

(1) examine the role of small business in the American economy and the contribution which 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 existing Federal subsidy and assistance programs for small business and the desirability of reducing the emphasis on such existing programs and increasing the emphasis on general assistance programs designed to benefit all small businesses;

(3) measure the direct costs and other effects of government regulation on small businesses; and make legislative and nonlegislative proposals for eliminating excessive or unnecessary regulations of small businesses;

(4) determine the impact of the tax structure on small businesses and make legislative and other proposals for altering the tax structure to enable all small businesses 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 businesses;

(6) determine financial resource availability and to recommend methods for delivery of financial assistance to minority enterprises, including methods for securing equity capital, for generating markets for goods and services, for providing effective business education, more effective management and technical assistance, and training, and for assistance in complying with Federal, State, and local law;

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

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

(9) recommend specific measures for creating an environment in which all businesses will have the opportunity to complete[1] effectively and expand to their full potential, and to ascertain the common reasons, if any, for small business successes and failures;

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

(11) advise, cooperate with, and consult with, the Chairman of the Administrative Conference of the United States with respect to section 504(e) of title 5; and

(12) evaluate the efforts of each department and agency of the United States, and of private industry, to assist small business concerns owned and controlled by veterans, as defined in section 632(q) of this title, and small business concerns owned and controlled by serviced-disabled[2] veterans, as defined in such section 632(q) of this title, and to provide statistical information on the utilization of such programs by such small business concerns, and to make appropriate recommendations to the Administrator of the Small Business Administration and to the Congress in order to promote the establishment and growth of those small business concerns.

(Pub. L. 94–305, title II, § 202, June 4, 1976, 90 Stat. 668; Pub. L. 96–481, title II, § 203(b), Oct. 21, 1980, 94 Stat. 2327; Pub. L. 106–50, title VII, § 702, Aug. 17, 1999, 113 Stat. 250.)

[1] So in original. Probably should be ''compete''.

[2] So in original.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

1999—Par. (12). Pub. L. 106–50 added par. (12).
1980—Par. (11). Pub. L. 96–481 added par. (11).

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–481 effective Oct. 1, 1981, and applicable to adversary adjudication as defined in section 504(b)(1)(C) of Title 5, Government Organization and Employees, and to civil actions and adversary adjudications described in section 2412 of Title 28, Judiciary and Judicial Procedure, which are pending on, or commenced on or after Oct. 1, 1981, see section 208 of Pub. L. 96–481, set out as an Effective Date note under section 504 of Title 5, Government Organization and Employees.

TERMINATION OF ADMINISTRATIVE CONFERENCE OF UNITED STATES

For termination of Administrative Conference of United States, see provision of title IV of Pub. L. 104–52, set out as a note preceding section 591 of Title 5, Government Organization and Employees.

ADVOCACY STUDY OF PAPERWORK AND TAX IMPACT

Pub. L. 103–403, title VI, § 613, Oct. 22, 1994, 108 Stat. 4205, directed Chief Counsel for Advocacy of the Small Business Administration to conduct a study of the impact of all Federal regulatory, paperwork, and tax requirements upon small business, and report its findings to Congress not later than 1 year after Oct. 22, 1994.

## § 634c. Additional duties of Office of Advocacy

The Office of Advocacy shall also perform the following duties on a continuing basis:

(1) 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 which affects small businesses;

(2) counsel small businesses on how to resolve questions and problems concerning the relationship of the small business to the Federal Government;

(3) develop proposals for changes in the policies and activities of any agency of the Federal Government which will better fulfill the purposes of this chapter and communicate such proposals to the appropriate Federal agencies;

(4) represent the views and interests of small businesses before other Federal agencies whose policies and activities may affect small business; and

(5) enlist the cooperation and assistance of public and private agencies, businesses, and other organizations in disseminating information about the programs and services provided by the Federal Government which are of benefit to small businesses, and information on how small businesses can participate in or make use of such programs and services.

(Pub. L. 94–305, title II, § 203, June 4, 1976, 90 Stat. 669.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

## § 634d. Staff and powers of Office of Advocacy

In carrying out the provisions of sections 634a to 634g of this title, the Chief Counsel for Advocacy may—

(1) employ and fix the compensation of such additional staff personnel as is deemed necessary, 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 such 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: *Provided, however*, 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 with experts and authorities in the fields of small business investment, venture capital, investment and commercial banking and other comparable financial institutions involved in the financing of business, and with individuals with regulatory, legal, economic, or financial expertise, including members of the academic community, and individuals who generally represent the public interest;

(4) utilize the services of the National Advisory Council established pursuant to the provisions of section 637(b)(13) of this title and in accordance with the provisions of such statute, also appoint such other advisory boards or committees as is reasonably appropriate and necessary to carry out the provisions of sections 634a to 634g of this title; and

(5) hold hearings and sit and act at such times and places as he may deem advisable.

(Pub. L. 94–305, title II, § 204, June 4, 1976, 90 Stat. 669; Pub. L. 96–302, title IV, § 402, July 2, 1980, 94 Stat. 850; Pub. L. 103–403, title VI, §§ 605(b), 610, Oct. 22, 1994, 108 Stat. 4203, 4204.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in par. (1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in par. (1), is set out under section 5332 of Title 5.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

1994—Pub. L. 103–403, §§ 605(b), 610(1), in introductory provisions substituted ''provisions of sections 634a to 634g of this title, the Chief'' for ''provisions of section 634b of this title, after consultation with and subject to the approval of the Administrator, the Chief''.

Par. (1). Pub. L. 103–403, § 610(2), substituted ''14'' for ''ten'' before ''staff personnel''.

1980—Par. (1). Pub. L. 96–302 authorized employment at any one time of ten staff personnel at rate of compensation not in excess of GS–15, step 10, of the General Schedule.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

### § 634e. Assistance of Government agencies

Each department, agency, and instrumentality of the Federal Government is authorized and directed to furnish to the Chief Counsel for Advocacy such reports and other information as he deems necessary to carry out his functions under sections 634a to 634g of this title.

(Pub. L. 94–305, title II, § 205, June 4, 1976, 90 Stat. 670.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

### § 634f. Reports

The Chief Counsel may from time to time prepare and publish such reports as he deems appropriate. Not later than one year after June 4, 1976, he shall transmit to the Congress, the President and the Administration, a full report containing his findings and specific recommendations with respect to each of the functions referred to in section 634b of this title, including specific legislative proposals and recommendations for administration or other action. Not later than 6 months after June 4, 1976, he shall prepare and transmit a preliminary report on his activities. The reports shall not be submitted to the Office of Management and Budget or to any other Federal agency or executive department for any purpose prior to transmittal to the Congress and the President.

(Pub. L. 94–305, title II, § 206, June 4, 1976, 90 Stat. 670.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

### § 634g. Authorization of appropriations

There are authorized to be appropriated not to exceed $1,000,000 to carry out the provisions of sections 634a to 634g of this title. Any sums so appropriated shall remain available until expended.

(Pub. L. 94–305, title II, § 207, June 4, 1976, 90 Stat. 671.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

### § 635. Deposit of moneys; depositaries, custodians, and fiscal agents; contributions to employees' compensation funds

(a) All moneys of the Administration not otherwise employed may be deposited with the Treasury of the United States subject to check by authority of the Administration. The Federal Reserve banks are authorized and directed to act as depositaries, custodians, and fiscal agents for the Administration in the general performance of its powers conferred by this chapter. Any banks insured by the Federal Deposit Insurance Corporation, when designated by the Secretary of the Treasury, shall act as custodians and financial agents for the Administration. Each Federal Reserve bank, when designated by the Administrator as fiscal agent for the Administration, shall be entitled to be reimbursed for all expenses incurred as such fiscal agent.

(b) The Administrator shall contribute to the employees' compensation fund, on the basis of annual billings as determined by the Secretary of Labor, for the benefit payments made from such fund on account of employees engaged in carrying out functions financed by the revolving fund established by section 633(c) of this title. The annual billings shall also include a statement of the fair portion of the cost of the administration of such fund, which shall be paid by the Administrator into the Treasury as miscellaneous receipts.

(Pub. L. 85–536, § 2[6], July 18, 1958, 72 Stat. 387.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 206 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, which was previously classified to this section. See Codification note set out under section 631 of this title.

### § 636. Additional powers

#### (a) Loans to small business concerns; allowable purposes; qualified business; restrictions and limitations

The Administration is empowered to the extent and in such amounts as provided in advance in appropriation Acts to make loans for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to any qualified small business concern, including those owned by qualified Indian tribes, for purposes of this chapter. Such financings may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis. These powers shall be subject, however, to the following restrictions, limitations, and provisions:

(1) IN GENERAL.—

(A) CREDIT ELSEWHERE.—No financial assistance shall be extended pursuant to this subsection if the applicant can obtain credit elsewhere. No immediate participation may be purchased unless it is shown that a deferred participation is not available; and no direct financing may be made unless it is shown that a participation is not available.

(B) BACKGROUND CHECKS.—Prior to the approval of any loan made pursuant to this subsection, or section 503 of the Small Business Investment Act of 1958 [15 U.S.C. 697], the Administrator may verify the applicant's criminal background, or lack thereof, through the best available means, including, if possible, use of the National Crime Information Center computer system at the Federal Bureau of Investigation.

(2) LEVEL OF PARTICIPATION IN GUARANTEED LOANS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in an agreement to participate in a loan on a deferred basis under this subsection (including a loan made under the Preferred Lenders Program), such participation by the Administration shall be equal to—

(i) 75 percent of the balance of the financing outstanding at the time of dis-

bursement of the loan, if such balance exceeds $150,000; or

(ii) 85 percent of the balance of the financing outstanding at the time of disbursement of the loan, if such balance is less than or equal to $150,000.

(B) REDUCED PARTICIPATION UPON REQUEST.—

(i) IN GENERAL.—The guarantee percentage specified by subparagraph (A) for any loan under this subsection may be reduced upon the request of the participating lender.

(ii) PROHIBITION.—The Administration shall not use the guarantee percentage requested by a participating lender under clause (i) as a criterion for establishing priorities in approving loan guarantee requests under this subsection.

(C) INTEREST RATE UNDER PREFERRED LENDERS PROGRAM.—

(i) IN GENERAL.—The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, applicable to other loans guaranteed under this subsection.

(ii) PREFERRED LENDERS PROGRAM DEFINED.—For purposes of this subparagraph, the term ''Preferred Lenders Program'' means any program established by the Administrator, as authorized under the proviso in section 634(b)(7) of this title, under which a written agreement between the lender and the Administration delegates to the lender—

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

(II) complete authority to service and liquidate such loans without obtaining the prior specific approval of the Administration for routine servicing and liquidation activities, but shall not take any actions creating an actual or apparent conflict of interest.

(D) PARTICIPATION UNDER EXPORT WORKING CAPITAL PROGRAM.—Notwithstanding subparagraph (A), in an agreement to participate in a loan on a deferred basis under the Export Working Capital Program established pursuant to paragraph (14)(A), such participation by the Administration shall not exceed 90 percent.

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

(A) if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this chapter would exceed $1,500,000 (or if the gross loan amount would exceed $2,000,000), except as provided in subparagraph (B);

(B) if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this chapter would exceed $1,750,000, of which not more than $1,250,000 may be used for working capital, supplies, or financings under paragraph (14) for export purposes; and

(C) if effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis if the amount would exceed $350,000.

(4) INTEREST RATES AND PREPAYMENT CHARGES.—

(A) INTEREST RATES.—Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection shall not exceed a rate prescribed by the Administration, and the rate of interest for the Administration's share of any direct or immediate participation loan shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 per centum, and an additional amount as determined by the Administration, but not to exceed 1 per centum per annum: *Provided*, That for those loans to assist any public or private organization for the handicapped or to assist any handicapped individual as provided in paragraph (10) of this subsection, the interest rate shall be 3 per centum per annum.

(B) PAYMENT OF ACCRUED INTEREST.—

(i) IN GENERAL.—Any bank or other lending institution making a claim for payment on the guaranteed portion of a loan made under this subsection shall be paid the accrued interest due on the loan from the earliest date of default to the date of payment of the claim at a rate not to exceed the rate of interest on the loan on the date of default, minus one percent.

(ii) LOANS SOLD ON SECONDARY MARKET.—If a loan described in clause (i) is sold on the secondary market, the amount of interest paid to a bank or other lending institution described in that clause from the earliest date of default to the date of payment of the claim shall be no more than the agreed upon rate, minus one percent.

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

(C) PREPAYMENT CHARGES

(i) IN GENERAL.—A borrower who prepays any loan guaranteed under this subsection shall remit to the Administration a subsidy recoupment fee calculated in accordance with clause (ii) if—

(I) the loan is for a term of not less than 15 years;

(II) the prepayment is voluntary;

(III) the amount of prepayment in any calendar year is more than 25 percent of the outstanding balance of the loan; and

(IV) the prepayment is made within the first 3 years after disbursement of the loan proceeds.

(ii) SUBSIDY RECOUPMENT FEE.—The subsidy recoupment fee charged under clause (i) shall be—

(I) 5 percent of the amount of prepayment, if the borrower prepays during the first year after disbursement;

(II) 3 percent of the amount of prepayment, if the borrower prepays during the second year after disbursement; and

(III) 1 percent of the amount of prepayment, if the borrower prepays during the third year after disbursement.

(5) No such loans including renewals and extensions thereof may be made for a period or periods exceeding twenty-five years, except that such portion of a loan made for the purpose of acquiring real property or constructing, converting, or expanding facilities may have a maturity of twenty-five years plus such additional period as is estimated may be required to complete such construction, conversion, or expansion.

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

(A) for loans to assist any public or private organization or to assist any handicapped individual as provided in paragraph (10) of this subsection any reasonable doubt shall be resolved in favor of the applicant;

(B) recognizing that greater risk may be associated with loans for energy measures as provided in paragraph (12) of this subsection, factors in determining ''sound value'' shall include, but not be limited to, quality of the product or service; technical qualifications of the applicant or his employees; sales projections; and the financial status of the business concern: *Provided further*, That such status need not be as sound as that required for general loans under this subsection; and[1]

(C) Repealed. Pub. L. 97–35, title XIX, § 1910, Aug. 13, 1981, 95 Stat. 778.

On that portion of the loan used to refinance existing indebtedness held by a bank or other lending institution, the Administration shall limit the amount of deferred participation to 80 per centum of the amount of the loan at the time of disbursement: *Provided further*, That any authority conferred by this subparagraph on the Administration shall be exercised solely by the Administration and shall not be delegated to other than Administration personnel.

(7) The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern.

(8) The Administration may make loans under this subsection to small business concerns owned and controlled by disabled veterans (as defined in section 4211(3) of title 38).

(9) The Administration may provide loans under this subsection to finance residential or commercial construction or rehabilitation for sale: *Provided, however*, That such loans shall not be used primarily for the acquisition of land.

(10) The Administration may provide guaranteed loans under this subsection to assist any public or private organization for the handicapped or to assist any handicapped individual, including service-disabled veterans, in establishing, acquiring, or operating a small business concern.

(11) The Administration may provide loans under this subsection to any small business concern, or to any qualified person seeking to establish such a concern when it determines that such loan will further the policies established in section 631(c)[2] of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals or owned by low-income individuals.

(12)(A) The Administration may provide loans under this subsection to assist any small business concern, including start up, to enable such concern to design architecturally or engineer, manufacture, distribute, market, install, or service energy measures: *Provided, however*, That such loan proceeds shall not be used primarily for research and development.

(b)[3] The Administration may provide deferred participation loans under this subsection to finance the planning, design, or installation of pollution control facilities for the purposes set forth in section 404 of the Small Business Investment Act of 1958 [15 U.S.C. 694–1]. Notwithstanding the limitation expressed in paragraph (3) of this subsection, a loan made under this paragraph may not result in a total amount outstanding and committed to a borrower from the business loan and investment fund of more than $1,000,000.

(13) The Administration may provide financings under this subsection to State and local development companies for the purposes of, and subject to the restrictions in, title V of the Small Business Investment Act of 1958 [15 U.S.C. 695 et seq.].

(14)(A) The Administration may provide extensions of credit, standby letters of credit, revolving lines of credit for export purposes, and other financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. A bank or participating lending institution may establish the rate of interest on such financings as may be legal and reasonable.

(B) When considering loan or guarantee applications, the Administration shall give weight to export-related benefits, including opening new markets for United States goods and services abroad and encouraging the involvement of small businesses, including agricultural concerns, in the export market.

[1] So in original. The ''; and'' probably should be a period.

[2] See References in Text note below.

[3] So in original. Probably should be ''(B)''.

(C) The Administration shall aggressively market its export financing program to small businesses.

(15)(A) The Administration may guarantee loans under this subsection to qualified employee trusts with respect to a small business concern for the purpose of purchasing stock of the concern under a plan approved by the Administrator which, when carried out, results in the qualified employee trust owning at least 51 per centum of the stock of the concern.

(B) The plan requiring the Administrator's approval under subparagraph (A) shall be submitted to the Administration by the trustee of such trust with its application for the guarantee. Such plan shall include an agreement with the Administrator which is binding on such trust and on the small business concern and which provides that—

(i) not later than the date the loan guaranteed under subparagraph (A) is repaid (or as soon thereafter as is consistent with the requirements of section 401(a) of title 26), at least 51 per centum of the total stock of such concern shall be allocated to the accounts of at least 51 per centum of the employees of such concern who are entitled to share in such allocation,

(ii) there will be periodic reviews of the role in the management of such concern of employees to whose accounts stock is allocated, and

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

(C) In determining whether to guarantee any loan under this paragraph, the individual business experience or personal assets of employee-owners shall not be used as criteria, except inasmuch as certain employee-owners may assume managerial responsibilities, in which case business experience may be considered.

(D) For purposes of this paragraph, a corporation which is controlled by any other person shall be treated as a small business concern if such corporation would, after the plan described in subparagraph (B) is carried out, be treated as a small business concern.

(E) The Administration shall compile a separate list of applications for assistance under this paragraph, indicating which applications were accepted and which were denied, and shall report periodically to the Congress on the status of employee-owned firms assisted by the Administration.

(16) INTERNATIONAL TRADE.—

(A) IN GENERAL.—If the Administrator determines that a loan guaranteed under this subsection will allow an eligible small business concern that is engaged in or adversely affected by international trade to improve its competitive position, the Administrator may make such loan to assist such concern in—

(i) the financing of the acquisition, construction, renovation, modernization, improvement, or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade; or

(ii) the refinancing of existing indebtedness that is not structured with reasonable terms and conditions.

(B) SECURITY.—Each loan made under this paragraph shall be secured by a first lien position or first mortgage on the property or equipment financed by the loan or on other assets of the small business concern.

(C) ENGAGED IN INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is engaged in international trade if, as determined by the Administrator, the small business concern is in a position to expand existing export markets or develop new export markets.

(D) ADVERSELY AFFECTED BY INTERNATIONAL TRADE.—For purposes of this paragraph, a small business concern is adversely affected by international trade if, as determined by the Administrator, the small business concern—

(i) is confronting increased competition with foreign firms in the relevant market; and

(ii) is injured by such competition.

(E) FINDINGS BY CERTAIN FEDERAL AGENCIES.—For purposes of subparagraph (D)(ii) the Administrator shall accept any finding of injury by the International Trade Commission or any finding of injury by the Secretary of Commerce pursuant to chapter 3 of title II of the Trade Act of 1974 [19 U.S.C. 2341 et seq.].

(17) The Administration shall authorize lending institutions and other entities in addition to banks to make loans authorized under this subsection.

(18) GUARANTEE FEES.—

(A) IN GENERAL.—With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

(i) A guarantee fee not to exceed 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

(ii) A guarantee fee not to exceed 3 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

(iii) A guarantee fee not to exceed 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.

(iv) In addition to the fee under clause (iii), a guarantee fee equal to 0.25 percent of any portion of the deferred participation share that is more than $1,000,000.

(B) RETENTION OF CERTAIN FEES.—Lenders participating in the programs established under this subsection may retain not more than 25 percent of a fee collected under subparagraph (A)(i).

(19)(A) In addition to the Preferred Lenders Program authorized by the proviso in section

634(b)(7) of this title, the Administration is authorized to establish a Certified Lenders Program for lenders who establish their knowledge of Administration laws and regulations concerning the guaranteed loan program and their proficiency in program requirements. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or that the loss experience of the lender is excessive as compared to other lenders, but such suspension or revocation shall not affect any outstanding guarantee.

(B) In order to encourage all lending institutions and other entities making loans authorized under this subsection to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration shall develop and allow participating lenders to solely utilize a uniform and simplified loan form for such loans.

(C) AUTHORITY TO LIQUIDATE LOANS.—

(i) IN GENERAL.—The Administrator may permit lenders participating in the Certified Lenders Program to liquidate loans made with a guarantee from the Administration pursuant to a liquidation plan approved by the Administrator.

(ii) AUTOMATIC APPROVAL.—If the Administrator does not approve or deny a request for approval of a liquidation plan within 10 business days of the date on which the request is made (or with respect to any routine liquidation activity under such a plan, within 5 business days) such request shall be deemed to be approved.

(20)(A) The Administration is empowered to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns eligible for assistance under subsection (j)(10) of this section and section 637(a) of this title. Such assistance may be provided only if the Administration determines that—

(i) the type and amount of such assistance requested by such concern is not otherwise available on reasonable terms from other sources;

(ii) with such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(iii) the proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

(iv) such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern.

(B)(i) No loan shall be made under this paragraph if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed $750,000.

(ii) Subject to the provisions of clause (i), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be not less than 85 per centum of the balance of the financing outstanding at the time of disbursement.

(iii) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable.

(iv) Financings made pursuant to this paragraph shall be subject to the following limitations:

(I) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(II) No direct financing may be made unless it is shown that a participation is unavailable.

(C) A direct loan or the Administration's share of an immediate participation loan made pursuant to this paragraph shall be any secured debt instrument—

(i) that is subordinated by its terms to all other borrowings of the issuer;

(ii) the rate of interest on which shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan and adjusted to the nearest one-eighth of 1 per centum;

(iii) the term of which is not more than twenty-five years; and

(iv) the principal on which is amortized at such rate as may be deemed appropriate by the Administration, and the interest on which is payable not less often than annually.

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

(i) to a small business concern that has been (or can reasonably be expected to be) detrimentally affected by—

(I) the closure (or substantial reduction) of a Department of Defense installation; or

(II) the termination (or substantial reduction) of a Department of Defense program on which such small business was a prime contractor or subcontractor (or supplier) at any tier; or

(ii) to a qualified individual or a veteran seeking to establish (or acquire) and operate a small business concern.

(B) Recognizing that greater risk may be associated with a loan to a small business concern described in subparagraph (A)(i), any reasonable doubts concerning the firm's proposed business plan for transition to nondefense-related markets shall be resolved in favor of the loan applicant when making any determination regarding the sound value of the proposed loan in accordance with paragraph (6).

(C) Loans pursuant to this paragraph shall be authorized in such amounts as provided in

advance in appropriation Acts for the purposes of loans under this paragraph.

(D) For purposes of this paragraph a qualified individual is—

(i) a member of the Armed Forces of the United States, honorably discharged from active duty involuntarily or pursuant to a program providing bonuses or other inducements to encourage voluntary separation or early retirement;

(ii) a civilian employee of the Department of Defense involuntarily separated from Federal service or retired pursuant to a program offering inducements to encourage early retirement; or

(iii) an employee of a prime contractor, subcontractor, or supplier at any tier of a Department of Defense program whose employment is involuntarily terminated (or voluntarily terminated pursuant to a program offering inducements to encourage voluntary separation or early retirement) due to the termination (or substantial reduction) of a Department of Defense program.

(E) JOB CREATION AND COMMUNITY BENEFIT.—In providing assistance under this paragraph, the Administration shall develop procedures to ensure, to the maximum extent practicable, that such assistance is used for projects that—

(i) have the greatest potential for—

(I) creating new jobs for individuals whose employment is involuntarily terminated due to reductions in Federal defense expenditures; or

(II) preventing the loss of jobs by employees of small business concerns described in subparagraph (A)(i); and

(ii) have substantial potential for stimulating new economic activity in communities most affected by reductions in Federal defense expenditures.

(22) The Administration is authorized to permit participating lenders to impose and collect a reasonable penalty fee on late payments of loans guaranteed under this subsection in an amount not to exceed 5 percent of the monthly loan payment per month plus interest.

(23) YEARLY FEE.—

(A) IN GENERAL.—With respect to each loan approved under this subsection, the Administration shall assess, collect, and retain a fee, not to exceed 0.55 percent per year of the outstanding balance of the deferred participation share of the loan, in an amount established once annually by the Administration in the Administration's annual budget request to Congress, as necessary to reduce to zero the cost to the Administration of making guarantees under this subsection. As used in this paragraph, the term ''cost'' has the meaning given that term in section 661a of title 2.

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

(C) LOWERING OF BORROWER FEES.—If the Administration determines that fees paid by lenders and by small business borrowers for guarantees under this subsection may be reduced, consistent with reducing to zero the cost to the Administration of making such guarantees—

(i) the Administration shall first consider reducing fees paid by small business borrowers under clauses (i) through (iii) of paragraph (18)(A), to the maximum extent possible; and

(ii) fees paid by small business borrowers shall not be increased above the levels in effect on December 8, 2004.

(24) NOTIFICATION REQUIREMENT.—The Administration shall notify the Committees on Small Business of the Senate and the House of Representatives not later than 15 days before making any significant policy or administrative change affecting the operation of the loan program under this subsection.

(25) LIMITATION ON CONDUCTING PILOT PROJECTS.—

(A) IN GENERAL.—Not more than 10 percent of the total number of loans guaranteed in any fiscal year under this subsection may be awarded as part of a pilot program which is commenced by the Administrator on or after October 1, 1996.

(B) ''PILOT PROGRAM'' DEFINED.—In this paragraph, the term 'pilot program' means any lending program initiative, project, innovation, or other activity not specifically authorized by law.

(C) LOW DOCUMENTATION LOAN PROGRAM.—The Administrator may carry out the low documentation loan program for loans of $100,000 or less only through lenders with significant experience in making small business loans. Not later than 90 days after September 30, 1996, the Administrator shall promulgate regulations defining the experience necessary for participation as a lender in the low documentation loan program.

(26) CALCULATION OF SUBSIDY RATE.—All fees, interest, and profits received and retained by the Administration under this subsection shall be included in the calculations made by the Director of the Office of Management and Budget to offset the cost (as that term is defined in section 661a of title 2) to the Administration of purchasing and guaranteeing loans under this chapter.

(27) Repealed. Pub. L. 106–8, §3(c), Apr. 2, 1999, 113 Stat. 16.

(28) LEASING.—In addition to such other lease arrangements as may be authorized by the Administration, a borrower may permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a loan guaranteed under this subsection, if the borrower permanently occupies and uses not less than 60 percent of the total business space in the property.

(29) REAL ESTATE APPRAISALS.—With respect to a loan under this subsection that is secured by commercial real property, an appraisal of such property by a State licensed or certified appraiser—

(A) shall be required by the Administration in connection with any such loan for more than $250,000; or

(B) may be required by the Administration or the lender in connection with any such loan for $250,000 or less, if such appraisal is necessary for appropriate evaluation of creditworthiness.

(30) OWNERSHIP REQUIREMENTS.—Ownership requirements to determine the eligibility of a small business concern that applies for assistance under any credit program under this chapter shall be determined without regard to any ownership interest of a spouse arising solely from the application of the community property laws of a State for purposes of determining marital interests.

(31) EXPRESS LOANS.—

(A) DEFINITIONS.—As used in this paragraph:

(i) The term ''express lender'' means any lender authorized by the Administration to participate in the Express Loan Program.

(ii) The term ''express loan'' means any loan made pursuant to this paragraph in which a lender utilizes to the maximum extent practicable its own loan analyses, procedures, and documentation.

(iii) The term ''Express Loan Program'' means the program for express loans established by the Administration under paragraph (25)(B), as in existence on April 5, 2004, with a guaranty rate of not more than 50 percent.

(B) RESTRICTION TO EXPRESS LENDER.—The authority to make an express loan shall be limited to those lenders deemed qualified to make such loans by the Administration. Designation as an express lender for purposes of making an express loan shall not prohibit such lender from taking any other action authorized by the Administration for that lender pursuant to this subsection.

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

(D) MAXIMUM LOAN AMOUNT.—The maximum loan amount under the Express Loan Program is $350,000.

(E) OPTION TO PARTICIPATE.—Except as otherwise provided in this paragraph, the Administration shall take no regulatory, policy, or administrative action, without regard to whether such action requires notification pursuant to paragraph (24), that has the effect of requiring a lender to make an express loan pursuant to subparagraph (D).

**(b) Disaster loans; authorization, scope, terms and conditions, etc.**

Except as to agricultural enterprises as defined in section 647(b)(1) of this title, the,[4] Administration also is empowered to the extent and in such amounts as provided in advance in appropriation Acts—

(1)(A) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to repair, rehabilitate or replace property, real or personal, damaged or destroyed by or as a result of natural or other disasters: *Provided*, That such damage or destruction is not compensated for by insurance or otherwise: *And provided further*, That the Administration may increase the amount of the loan by up to an additional 20 per centum if it determines such increase to be necessary or appropriate in order to protect the damaged or destroyed property from possible future disasters by taking mitigating measures, including, but not limited to, construction of retaining walls and sea walls, grading and contouring land, relocating utilities and modifying structures;

(B) to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern: *Provided*, That no loan or guarantee shall be extended unless the Administration finds that (i) the applicant is not able to obtain credit elsewhere; (ii) such property is to be repaired, rehabilitated, or replaced; (iii) the amount refinanced shall not exceed the amount of physical loss sustained; and (iv) such amounts shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise; and

(C) during fiscal years 2000 through 2004, to establish a predisaster mitigation program to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis), as the Administrator may determine to be necessary or appropriate, to enable small businesses to use mitigation techniques in support of a formal mitigation program established by the Federal Emergency Management Agency, except that no loan or guarantee may be extended to a small business under this subparagraph unless the Administration finds that the small business is otherwise unable to obtain credit for the purposes described in this subparagraph;

(2) to make such loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis) as the Administration may determine to be necessary or appropriate to any small business concern or small agricultural cooperative located in an area affected by a disaster, if the Administration determines that the concern or the cooperative has suffered a substantial economic injury as a result of such disaster and if such disaster constitutes—

(A) a major disaster, as determined by the President under the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5121 et seq.]; or

(B) a natural disaster, as determined by the Secretary of Agriculture pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1961); or

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

[4] So in original. The comma probably should not appear.

(D) if no disaster declaration has been issued pursuant to subparagraph (A), (B), or (C), the Governor of a State in which a disaster has occurred may certify to the Small Business Administration that small business concerns or small agricultural cooperatives (1) have suffered economic injury as a result of such disaster, and (2) are in need of financial assistance which is not available on reasonable terms in the disaster stricken area. Upon receipt of such certification, the Administration may then make such loans as would have been available under this paragraph if a disaster declaration had been issued.

*Provided*, That no loan or guarantee shall be extended pursuant to this paragraph (2) unless the Administration finds that the applicant is not able to obtain credit elsewhere.

(3)(A) In this paragraph—

(i) the term ''essential employee'' means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern;

(ii) the term ''period of military conflict'' has the meaning given the term in subsection (n)(1) of this section; and

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

(I) to meet its obligations as they mature;

(II) to pay its ordinary and necessary operating expenses; or

(III) to market, produce, or provide a product or service ordinarily marketed, produced, or provided by the business concern.

(B) The Administration may make such disaster loans (either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis) to assist a small business concern that has suffered or that is likely to suffer substantial economic injury as the result of an essential employee of such small business concern being ordered to active military duty during a period of military conflict.

(C) A small business concern described in subparagraph (B) shall be eligible to apply for assistance under this paragraph during the period beginning on the date on which the essential employee is ordered to active duty and ending on the date that is 90 days after the date on which such essential employee is discharged or released from active duty.

(D) Any loan or guarantee extended pursuant to this paragraph shall be made at the same interest rate as economic injury loans under paragraph (2).

(E) No loan may be made under this paragraph, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under this subsection would exceed $1,500,000, unless such applicant constitutes a major source of employment in its surrounding area, as determined by the Administration, in which case the Administration, in its discretion, may waive the $1,500,000 limitation.

(F) For purposes of assistance under this paragraph, no declaration of a disaster area shall be required.

No loan under this subsection, including renewals and extensions thereof, may be made for a period or periods exceeding thirty years: *Provided*, That the Administrator may consent to a suspension in the payment of principal and interest charges on, and to an extension in the maturity of, the Federal share of any loan under this subsection for a period not to exceed five years, if (A) the borrower under such loan is a homeowner or a small business concern, (B) the loan was made to enable (i) such homeowner to repair or replace his home, or (ii) such concern to repair or replace plant or equipment which was damaged or destroyed as the result of a disaster meeting the requirements of clause (A) or (B) of paragraph (2) of this subsection, and (C) the Administrator determines such action is necessary to avoid severe financial hardship: *Provided further*, That the provisions of paragraph (1) of subsection (c) of this section shall not be applicable to any such loan having a maturity in excess of twenty years. Notwithstanding the provisions of any other law, the interest rate on the Administration's share of any loan made under this subsection, except as provided in subsection (c) of this section, shall not exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum plus one-quarter of 1 per centum: *Provided*, *however*, That the interest rate for loans made under paragraphs (1) and (2) hereof shall not exceed the rate of interest which is in effect at the time of the occurrence of the disaster. In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration shall not be in excess of 90 per centum of the balance of the loan outstanding at the time of disbursement. Notwithstanding any other provision of law, the interest rate on the Administration's share of any loan made pursuant to paragraph (1) of this subsection to repair or replace a primary residence and/or replace or repair damaged or destroyed personal property, less the amount of compensation by insurance or otherwise, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be: 1 per centum on the amount of such loan not exceeding $10,000, and 3 per centum on the amount of such loan over $10,000 but not exceeding $40,000. The interest rate on the Administration's share of the first $250,000 of all other loans made pursuant to paragraph (1) of this subsection, with respect to a disaster occurring on or after July 1, 1976, and prior to October 1, 1978, shall be 3 per centum. All repayments of principal on the Administration's share of any loan made under the above provisions shall first be applied to reduce the principal sum of such loan

which bears interest at the lower rates provided in this paragraph. The principal amount of any loan made pursuant to paragraph (1) in connection with a disaster which occurs on or after April 1, 1977, but prior to January 1, 1978, may be increased by such amount, but not more than $2,000, as the Administration determines to be reasonable in light of the amount and nature of loss, damage, or injury sustained in order to finance the installation of insulation in the property which was lost, damaged, or injured, if the uninsured, damaged portion of the property is 10 per centum or more of the market value of the property at the time of the disaster. Not later than June 1, 1978, the Administration shall prepare and transmit to the Select Committee on Small Business of the Senate, the Committee on Small Business of the House of Representatives, and the Committees of the Senate and House of Representatives having jurisdiction over measures relating to energy conservation, a report on its activities under this paragraph, including therein an evaluation of the effect of such activities on encouraging the installation of insulation in property which is repaired or replaced after a disaster which is subject to this paragraph, and its recommendations with respect to the continuation, modification, or termination of such activities.

In the administration of the disaster loan program under paragraphs (1), (2), and (4) of this subsection, in the case of property loss or damage or injury resulting from a major disaster as determined by the President or a disaster as determined by the Administrator which occurs on or after January 1, 1971, and prior to July 1, 1973, the Small Business Administration, to the extent such loss or damage or injury is not compensated for by insurance or otherwise—

(A) may make any loan for repair, rehabilitation, or replacement of property damaged or destroyed without regard to whether the required financial assistance is otherwise available from private sources;

(B) may, in the case of the total destruction or substantial property damage of a home or business concern, refinance any mortgage or other liens outstanding against the destroyed or damaged property if such property is to be repaired, rehabilitated, or replaced, except that (1) in the case of a business concern, the amount refinanced shall not exceed the amount of the physical loss sustained, and (2) in the case of a home, the amount of each monthly payment of principal and interest on the loan after refinancing under this clause shall not be less than the amount of each such payment made prior to such refinancing;

(C) may, in the case of a loan made under clause (A) or a mortgage or other lien refinanced under clause (B) in connection with the destruction of, or substantial damage to, property owned and used as a residence by an individual who by reason of retirement, disability, or other similar circumstances relies for support on survivor, disability, or retirement benefits under a pension, insurance, or other programs, consent to the suspension of the payments of the principal of that loan, mortgage, or lien during the lifetime of that individual and his spouse for so long as the Administration determines that making such payments would constitute a substantial hardship;

(D) shall notwithstanding the provisions of any other law and upon presentation by the applicant of proof of loss or damage or injury and a bona fide estimate of cost of repair, rehabilitation, or replacement, cancel the principal of any loan made to cover a loss or damage or injury resulting from such disaster, except that—

(i) with respect to a loan made in connection with a disaster occurring on or after January 1, 1971 but prior to January 1, 1972, the total amount so canceled shall not exceed $2,500, and the interest on the balance of the loan shall be at a rate of 3 per centum per annum; and

(ii) with respect to a loan made in connection with a disaster occurring on or after January 1, 1972 but prior to July 1, 1973, the total amount so canceled shall not exceed $5,000 and the interest on the balance of the loan shall be at a rate of 1 percentum per annum.

(E)[5] A State grant made on or prior to July 1, 1979, shall not be considered compensation for the purpose of applying the provisions of section 312(a) of the Disaster Relief and Emergency Assistance Act [42 U.S.C. 5155(a)] to a disaster loan under paragraph (1), (2), or (4) of this subsection.

With respect to any loan referred to in clause (D) which is outstanding on August 16, 1972, the Administrator shall—

(i) make such change in the interest rate on the balance of such loan as is required under that clause effective as of August 16, 1972; and

(ii) in applying the limitation set forth in that clause with respect to the total amount of such loan which may be canceled, consider as part of the amount so canceled any part of such loan which was previously canceled pursuant to section 231 of the Disaster Relief Act of 1970 [15 U.S.C. 636a].

Whoever wrongfully misapplies the proceeds of a loan obtained under this subsection shall be civilly liable to the Administrator in an amount equal to one-and-one half times the original principal amount of the loan.

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

(1) The Administration may further extend the maturity of or renew any loan made pursuant to this section, or any loan transferred to the Administration pursuant to Reorganization Plan Numbered 2 of 1954, or Reorganization Plan Numbered 1 of 1957, for additional periods not to exceed ten years beyond the period stated therein, if such extension or renewal will aid in the orderly liquidation of such loan.

(2) During any period in which principal and interest charges are suspended on the Federal share of any loan, as provided in subsection (b) of this section, the Administrator shall, upon

[5] See 1980 Amendment note below.

the request of any person, firm, or corporation having a participation in such loan, purchase such participation, or assume the obligation of the borrower, for the balance of such period, to make principal and interest payments on the non-Federal share of such loan: *Provided*, That no such payments shall be made by the Administrator in behalf of any borrower unless (i) the Administrator determines that such action is necessary in order to avoid a default, and (ii) the borrower agrees to make payments to the Administration in an aggregate amount equal to the amount paid in its behalf by the Administrator, in such manner and at such times (during or after the term of the loan) as the Administrator shall determine having due regard to the purposes sought to be achieved by this paragraph.

(3) With respect to a disaster occurring on or after October 1, 1978, and prior[6] August 13, 1981, on the Administration's share of loans made pursuant to paragraph (1) of subsection (b) of this section—

(A) if the loan proceeds are to repair or replace a primary residence and/or repair or replace damaged or destroyed personal property, the interest rate shall be 3 percent on the first $55,000 of such loan;

(B) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is unable to obtain sufficient credit elsewhere, the interest rate shall be as determined by the Administration, but not in excess of 5 percent per annum; and

(C) if the loan proceeds are to repair or replace property damaged or destroyed and if the applicant is a business concern which is able to obtain sufficient credit elsewhere, the interest rate shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans and adjusted to the nearest one-eighth of 1 percent, and an additional amount as determined by the Administration, but not to exceed 1 percent: *Provided*, That three years after such loan is fully disbursed and every two years thereafter for the term of the loan, if the Administration determines that the borrower is able to obtain a loan from non-Federal sources at reasonable rates and terms for loans of similar purposes and periods of time, the borrower shall, upon request by the Administration, apply for and accept such a loan in sufficient amount to repay the Administration: *Provided further*, That no loan under subsection (b)(1) of this section shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis, if the total amount outstanding and committed to the borrower under such subsection would exceed $500,000 for each disaster, unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation.

[6] So in original. Probably should be ''prior to''.

(4) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b) of this section shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum but not to exceed 8 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum;

(C) in the case of a business concern unable to obtain credit elsewhere, not to exceed 8 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the rate prevailing in private market for similar loans and not more than the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a) of this section. Loans under this subparagraph shall be limited to a maximum term of three years.

(5) Notwithstanding the provisions of any other law, the interest rate on the Federal share of any loan made under subsection (b)(1) and (b)(2) of this section on account of a disaster commencing on or after October 1, 1982, shall be—

(A) in the case of a homeowner unable to secure credit elsewhere, the rate prescribed by the Administration but not more than one-half the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loan plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 4 per centum per annum;

(B) in the case of a homeowner able to secure credit elsewhere, the rate prescribed by the Administration but not more than the rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding

marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans plus an additional charge of not to exceed 1 per centum per annum as determined by the Administrator, and adjusted to the nearest one-eighth of 1 per centum, but not to exceed 8 per centum per annum;

(C) in the case of a business or other concern, including agricultural cooperatives, unable to obtain credit elsewhere, not to exceed 4 per centum per annum;

(D) in the case of a business concern able to obtain credit elsewhere, the rate prescribed by the Administration but not in excess of the lowest of (i) the rate prevailing in the private market for similar loans, (ii) the rate prescribed by the Administration as the maximum interest rate for deferred participation (guaranteed) loans under subsection (a) of this section, or (iii) 8 per centum per annum. Loans under this subparagraph shall be limited to a maximum term of three years.

(6) Notwithstanding the provisions of any other law, such loans, subject to the reductions required by subparagraphs (A) and (B) of subsection (b)(1) of this section, shall be in amounts equal to 100 per centum of loss. The interest rates for loans made under subsection (b)(1) and (2) of this section, as determined pursuant to paragraph (5), shall be the rate of interest which is in effect on the date of the disaster commenced: *Provided*, That no loan under subsection (b)(1) and (2) of this section shall be made, either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred (guaranteed) basis, if the total amount outstanding and committed to the borrower under subsection (b) of this section would exceed $500,000 for each disaster unless an applicant constitutes a major source of employment in an area suffering a disaster, in which case the Administration, in its discretion, may waive the $500,000 limitation: *Provided further*, That the Administration, subject to the reductions required by subparagraphs (A) and (B) of subsection (b)(1) of this section, shall not reduce the amount of eligibility for any homeowner on account of loss of real estate to less than $100,000 for each disaster nor for any homeowner or lessee on account of loss of personal property to less than $20,000 for each disaster, such sums being in addition to any eligible refinancing: *Provided further*, That the Administration shall not require collateral for loans of $10,000 or less which are made under paragraph (1) of subsection (b) of this section. Employees of concerns sharing a common business premises shall be aggregated in determining ''major source of employment'' status for nonprofit applicants owning such premises.

With respect to any loan which is outstanding on April 18, 1984, and which was made on account of a disaster commencing on or after October 1, 1982, the Administrator shall make such change in the interest rate on the balance of such loan as is required herein effective as of April 18, 1984.

(7) The Administration shall not withhold disaster assistance pursuant to this paragraph to nurseries who are victims of drought disasters. As used in subsection (b)(2) of this section the term ''an area affected by a disaster'' includes any county, or county contiguous thereto, determined to be a disaster by the President, the Secretary of Agriculture or the Administrator of the Small Business Administration.

**(d) Funds for small business development centers under section 648 of this title**

The Administration shall not fund any Small Business Development Center or any variation thereof, except as authorized in section 648 of this title.

**(e) [RESERVED]**

**(f) [RESERVED]**

**(g) Repealed. Pub. L. 97–35, title XIX, § 1913(c), Aug. 13, 1981, 95 Stat. 780**

**(h) Loans to handicapped persons and organizations for handicapped**

(1) The Administration also is empowered, where other financial assistance is not available on reasonable terms, to make such loans (either directly or in cooperation with Banks or other lending institutions through agreements to participate on an immediate or deferred basis) as the Administration may determine to be necessary or appropriate—

(A) to assist any public or private organization—

(i) which is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual;

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

(iii) which, in the production of commodities and in the provision of services during any fiscal year in which it receives financial assistance under this subsection, employs handicapped individuals for not less than 75 per centum of the man-hours required for the production or provision of the commodities or services; or

(B) to assist any handicapped individual in establishing, acquiring, or operating a small business concern.

(2) The Administration's share of any loan made under this subsection shall not exceed $350,000, nor may any such loan be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by section 633(c)(1)(B) of this title would exceed $350,000. In agreements to participate in loans on a deferred basis under this subsection, the Administration's participation may total 100 per centum of the balance of the loan at the time of disbursement. The Administration's share of any loan made under this subsection shall bear interest at the rate of 3 per centum

per annum. The maximum term of any such loan, including extensions and renewals thereof, may not exceed fifteen years. All loans made under this subsection shall be of such sound value or so secured as reasonably to assure repayment: *Provided, however*, That any reasonable doubt shall be resolved in favor of the applicant.

(3) For purposes of this subsection, the term ''handicapped individual'' means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

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

(1) The Administration also is empowered to make, participate (on an immediate basis) in, or guarantee loans, repayable in not more than fifteen years, to any small business concern, or to any qualified person seeking to establish such a concern, when it determines that such loans will further the policies established in section 631(b)[7] of this title, with particular emphasis on the preservation or establishment of small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals: *Provided, however*, That no such loans shall be made, participated in, or guaranteed if the total of such Federal assistance to a single borrower outstanding at any one time would exceed $100,000. The Administration may defer payments on the principal of such loans for a grace period and use such other methods as it deems necessary and appropriate to assure the successful establishment and operation of such concern. The Administration may, in its discretion, as a condition of such financial assistance, require that the borrower take steps to improve his management skills by participating in a management training program approved by the Administration: *Provided, however*, That any management training program so approved must be of sufficient scope and duration to provide reasonable opportunity for the individuals served to develop entrepreneurial and managerial self-sufficiency.

(2) The Administration shall encourage, as far as possible, the participation of the private business community in the program of assistance to such concerns, and shall seek to stimulate new private lending activities to such concerns through the use of the loan guarantees, participations in loans, and pooling arrangements authorized by this subsection.

(3) To insure an equitable distribution between urban and rural areas for loans between $3,500 and $100,000 made under this subsection, the Administration is authorized to use the agencies and agreements and delegations developed under title III of the Economic Opportunity Act of 1964, as amended [42 U.S.C. 2841 et seq.], as it shall determine necessary.

(4) The Administration shall provide for the continuing evaluation of programs under this subsection, including full information on the location, income characteristics, and types of businesses and individuals assisted, and on new private lending activity stimulated, and the results of such evaluation together with recommendations shall be included in the report required by section 639(a) of this title.

(5) Loans made pursuant to this subsection (including immediate participation in and guarantees of such loans) shall have such terms and conditions as the Administration shall determine, subject to the following limitations—

(A) there is reasonable assurance of repayment of the loan;

(B) the financial assistance is not otherwise available on reasonable terms from private sources or other Federal, State, or local programs;

(C) the amount of the loan, together with other funds available, is adequate to assure completion of the project or achievement of the purposes for which the loan is made;

(D) the loan bears interest at a rate not less than (i) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield on outstanding Treasury obligations of comparable maturity, plus (ii) such additional charge, if any, toward covering other costs of the program as the Administration may determine to be consistent with its purposes: *Provided, however*, That the rate of interest charged on loans made in redevelopment areas designated under the Public Works and Economic Development Act of 1965 [42 U.S.C. 3121 et seq.] shall not exceed the rate currently applicable to new loans made under section 201 of that Act [42 U.S.C. 3141]; and

(E) fees not in excess of amounts necessary to cover administrative expenses and probable losses may be required on loan guarantees.

(6) The Administration shall take such steps as may be necessary to insure that, in any fiscal year, at least 50 per centum of the amounts loaned or guaranteed pursuant to this subsection are allotted to small business concerns located in urban areas identified by the Administration as having high concentrations of unemployed or low-income individuals or to small business concerns owned by low-income individuals. The Administration shall define the meaning of low income as it applies to owners of small business concerns eligible to be assisted under this subsection.

(7) No financial assistance shall be extended pursuant to this subsection where the Administration determines that the assistance will be used in relocating establishments from one area to another if such relocation would result in an increase in unemployment in the area of original location.

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

(1) The Administration shall provide financial assistance to public or private organizations to

[7] See References in Text note below.

pay all or part of the cost of projects designed to provide technical or management assistance to individuals or enterprises eligible for assistance under subsection (i) of this section, paragraph (10) of this subsection; and section 637(a) of this title, with special attention to small businesses located in areas of high concentration of unemployed or low-income individuals, to small businesses eligible to receive contracts pursuant to section 637(a) of this title.

(2) Financial assistance under this subsection may be provided for projects, including, but not limited to—

(A) planning and research, including feasibility studies and market research;

(B) the identification and development of new business opportunities;

(C) the furnishing of centralized services with regard to public services and Federal Government programs including programs authorized under subsection (i) of this section; paragraph (10) of this subsection, and section 637(a) of this title;

(D) the establishment and strengthening of business service agencies, including trade associations and cooperatives; and

(E) the furnishing of business counseling, management training, and legal and other related services, with special emphasis on the development of management training programs using the resources of the business community, including the development of management training opportunities in existing business, and with emphasis in all cases upon providing management training of sufficient scope and duration to develop entrepreneurial and managerial self-sufficiency on the part of the individuals served.

(3) The Administration shall encourage the placement of subcontracts by businesses with small business concerns located in areas of high concentration of unemployed or low-income individuals, with small businesses owned by low-income individuals, and with small businesses eligible to receive contracts pursuant to section 637(a) of this title. The Administration may provide incentives and assistance to such businesses that will aid in the training and upgrading of potential subcontractors or other small business concerns eligible for assistance under subsections (i) and (j) of this section, and section 637(a) of this title.

(4) The Administration shall give preference to projects which promote the ownership, participation in ownership, or management of small businesses owned by low-income individuals and small businesses eligible to receive contracts pursuant to section 637(a) of this title.

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

(6) The Administration is authorized to make payments under grants and contracts entered into under this subsection in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments.

(7) To the extent feasible, services under this subsection shall be provided in a location which is easily accessible to the individuals and small business concerns served.

(8) Repealed. Pub. L. 101–574, title II, §242(2), Nov. 15, 1990, 104 Stat. 2827.

(9) The Administration shall take such steps as may be necessary and appropriate, in coordination and cooperation with the heads of other Federal departments and agencies, to insure that contracts, subcontracts, and deposits made by the Federal Government or with programs aided with Federal funds are placed in such way as to further the purposes of subsections (i) and (j) of this section and section 637(a) of this title.

(10) There is established within the Administration a small business and capital ownership development program (hereinafter referred to as the ''Program'') which shall provide assistance exclusively for small business concerns eligible to receive contracts pursuant to section 637(a) of this title. The program, and all other services and activities authorized under this subsection and section 637(a) of this title, shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(A) The Program shall—

(i) assist small business concerns participating in the Program (either through public or private organizations) to develop and maintain comprehensive business plans which set forth the Program Participant's specific business targets, objectives, and goals developed and maintained in conformity with subparagraph (D).[8]

(ii) provide for such other nonfinancial services as deemed necessary for the establishment, preservation, and growth of small business concerns participating in the Program, including but not limited to (I) loan packaging, (II) financial counseling, (III) accounting and bookkeeping assistance, (IV) marketing assistance, and (V) management assistance;

(iii) assist small business concerns participating in the Program to obtain equity and debt financing;

(iv) establish regular performance monitoring and reporting systems for small business concerns participating in the Program to assure compliance with their business plans;

(v) analyze and report the causes of success and failure of small business concerns participating in the Program; and

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to, (I) the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958 [15 U.S.C. 694a et seq.].

[8] So in original. The period probably should be a semicolon.

(B) Small business concerns eligible to receive contracts pursuant to section 637(a) of this title shall participate in the Program.

(C)(i) A small business concern participating in any program or activity conducted under the authority of this paragraph or eligible for the award of contracts pursuant to section 637(a) of this title on September 1, 1988, shall be permitted continued participation and eligibility in such program or activity for a period of time which is the greater of—

(I) 9 years less the number of years since the award of its first contract pursuant to section 637(a) of this title; or

(II) its original fixed program participation term (plus any extension thereof) assigned prior to November 15, 1988, plus eighteen months.

(ii) Nothing contained in this subparagraph shall be deemed to prevent the Administration from instituting a termination or graduation pursuant to subparagraph (F) or (H) for issues unrelated to the expiration of any time period limitation.

(D)(i) Promptly after certification under paragraph (11) a Program Participant shall submit a business plan (hereinafter referred to as the ''plan'') as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. The plan may be a revision of a preliminary business plan submitted by the Program Participant or required by the Administration as a part of the application for certification under this section and shall be designed to result in the Program Participant eliminating the conditions or circumstances upon which the Administration determined eligibility pursuant to section 637(a)(6) of this title. Such plan, and subsequent modifications submitted under clause (iii) of this subparagraph, shall be approved by the business opportunity specialist prior to the Program Participant being eligible for award of a contract pursuant to section 637(a) of this title.

(ii) The plans submitted under this subparagraph shall include the following:

(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of program participation and after graduation.

(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede the small business concern from receiving contracts other than those awarded under section 637(a) of this title.

(III) Specific targets, objectives, and goals, for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's plan during the first year of the transitional stage of Program participation).

(V) Estimates of contract awards pursuant to section 637(a) of this title and from other sources, which the Program Participant will require to meet the specific targets, objectives, and goals for the years covered by its plan. The estimates established shall be consistent with the provisions of subparagraph (I) and section 637(a) of this title.

(iii) Each Program Participant shall annually review its currently approved plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Business Opportunity Specialist. Annual reviews pertaining to years in the transitional stage of program participation shall require, as appropriate, a written verification that such Program Participant has complied with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title.

(iv) Each Program Participant shall annually forecast its needs for contract awards under section 637(a) of this title for the next program year and the succeeding program year during the review of its business plan, conducted pursuant to clause (iii). Such forecast shall be known as the section 8(a) [15 U.S.C. 637(a)] contract support level and shall be included in the Program Participant's business plan. Such forecast shall include—

(I) the aggregate dollar value of contract support to be sought on a noncompetitive basis under section 637(a) of this title, reflecting compliance with the requirements of subparagraph (I) relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title,

(II) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

(III) an estimate of the dollar value of contract support to be sought on a competitive basis, and

(IV) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.

(E) A small business concern participating in the program conducted under the authority of this paragraph and eligible for the award of contracts pursuant to section 637(a) of this title shall be denied all such assistance if such concern—

(i) voluntarily elects not to continue participation;

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

(iii) is terminated pursuant to a termination proceeding conducted in accordance with section 637(a)(9) of this title; or

(iv) is graduated pursuant to a graduation proceeding conducted in accordance with section 637(a)(9) of this title.

(F) For purposes of this section and section 637(a) of this title, the term ''terminated'' and the term ''termination'' means the total denial or suspension of assistance under this paragraph or under section 637(a) of this title prior to the graduation of the participating small business concern or prior to the expiration of the maximum program participation term. An action for termination shall be based upon good cause, including—

(i) the failure by such concern to maintain its eligibility for Program participation;

(ii) the failure of the concern to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of unjustified delinquent performance or terminations for default with respect to contracts awarded under the authority of section 637(a) of this title;

(iii) a demonstrated pattern of failing to make required submissions or responses to the Administration in a timely manner;

(iv) the willful violation of any rule or regulation of the Administration pertaining to material issues;

(v) the debarment of the concern or its disadvantaged owners by any agency pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); or

(vi) the conviction of the disadvantaged owner or an officer of the concern for any offense indicating a lack of business integrity including any conviction for embezzlement, theft, forgery, bribery, falsification or violation of section 645 of this title. For purposes of this clause, no termination action shall be taken with respect to a disadvantaged owner solely because of the conviction of an officer of the concern (who is other than a disadvantaged owner) unless such owner conspired with, abetted, or otherwise knowingly acquiesced in the activity or omission that was the basis of such officer's conviction.

(G) The Director of the Division may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business and Capital Ownership Development. Whenever the Associate Administrator, or a designee of such officer, determines such termination is appropriate, within 15 days after making such a determination the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (F) without first being afforded an opportunity for a hearing in accordance with section 637(a)(9) of this title.

(H) For the purposes of this subsection and section 637(a) of this title the term ''graduated'' or ''graduation'' means that the Program Participant is recognized as successfully completing the program by substantially achieving the targets, objectives, and goals contained in the concern's business plan thereby demonstrating its ability to compete in the marketplace without assistance under this section or section 637(a) of this title.

(I)(i) During the developmental stage of its participation in the Program, a Program Participant shall take all reasonable efforts within its control to attain the targets contained in its business plan for contracts awarded other than pursuant to section 637(a) of this title (hereinafter referred to as ''business activity targets.''). Such efforts shall be made a part of the business plan and shall be sufficient in scope and duration to satisfy the Administration that the Program Participant will engage a reasonable marketing strategy that will maximize its potential to achieve its business activity targets.

(ii) During the transitional stage of the Program a Program Participant shall be subject to regulations regarding business activity targets that are promulgated by the Administration pursuant to clause (iii);

(iii) The regulations referred to in clause (ii) shall:

(I) establish business activity targets applicable to Program Participants during the fifth year and each succeeding year of Program Participation; such targets, for such period of time, shall reflect a reasonably consistent increase in contracts awarded other than pursuant to section 637(a) of this title, expressed as a percentage of total sales; when promulgating business activity targets the Administration may establish modified targets for Program Participants that have participated in the Program for a period of longer than four years on June 1, 1989;

(II) require a Program Participant to attain its business activity targets;

(III) provide that, before the receipt of any contract to be awarded pursuant to section 637(a) of this title, the Program Participant (if it is in the transitional stage) must certify that it has complied with the regulations promulgated pursuant to subclause (II), or that it is in compliance with such remedial measures as may have been ordered pursuant to regulations issued under subclause (V);

(IV) require the Administration to review each Program Participant's performance regarding attainment of business activity targets during periodic reviews of such Participant's business plan; and

(V) authorize the Administration to take appropriate remedial measures with respect to a Program Participant that has failed to attain a required business activity target for the purpose of reducing such Participant's dependence on contracts awarded pursuant to section 637(a) of this title; such remedial actions may include, but are not limited to assisting the Program Participant to expand the dollar volume of its competitive business activity or limiting the dollar volume of contracts awarded to the Program Participant pursuant to section 637(a) of this title; except for actions that would constitute a termination, remedial measures taken pursuant to this subclause shall not be reviewable pursuant to section 637(a)(9) of this title.

(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Pro-

gram whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (F). A Program Participant's eligibility for award of any contract under the authority of section 637(a) of this title may be suspended pursuant to subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation).

(ii)(I) Except as authorized by subclauses (II) or (III), no award shall be made pursuant to section 637(a) of this title to a concern other than a small business concern.

(II) In determining the size of a small business concern owned by a socially and economically disadvantaged Indian tribe (or a wholly owned business entity of such tribe), each firm's size shall be independently determined without regard to its affiliation with the tribe, any entity of the tribal government, or any other business enterprise owned by the tribe, unless the Administrator determines that one or more such tribally owned business concerns have obtained, or are likely to obtain, a substantial unfair competitive advantage within an industry category.

(III) Any joint venture established under the authority of section 602(b) of Public Law 100–656, the ''Business Opportunity Development Reform Act of 1988'', shall be eligible for award of a contract pursuant to section 637(a) of this title.

(11)(A) The Associate Administrator for Minority Small Business and Capital Ownership Development shall be responsible for coordinating and formulating policies relating to Federal assistance to small business concerns eligible for assistance under subsection (i) of this section and small business concerns eligible to receive contracts pursuant to section 637(a) of this title.

(B)(i) Except as provided in clause (iii), no individual who was determined pursuant to section 637(a) of this title to be socially and economically disadvantaged before August 15, 1989, shall be permitted to assert such disadvantage with respect to any other concern making application for certification after August 15, 1989.

(ii) Except as provided in clause (iii), any individual upon whom eligibility is based pursuant to section 637(a)(4) of this title shall be permitted to assert such eligibility for only one small business concern.

(iii) A socially and economically disadvantaged Indian tribe may own more than one small business concern eligible for assistance pursuant to paragraph (10) and section 637(a) of this title if—

(I) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(II) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(C) No concern, previously eligible for the award of contracts pursuant to section 637(a) of this title, shall be subsequently recertified for program participation if its prior participation in the program was concluded for any of the reasons described in paragraph (10)(E).

(D) A concern eligible for the award of contracts pursuant to this subsection shall remain eligible for such contracts if there is a transfer of ownership and control (as defined pursuant to section 637(a)(4) of this title) to individuals who are determined to be socially and economically disadvantaged pursuant to section 637(a) of this title. In the event of such a transfer, the concern, if not terminated or graduated, shall be eligible for a period of continued participation in the program not to exceed the time limitations prescribed in paragraph (15).

(E) There is established a Division of Program Certification and Eligibility (hereinafter referred to in this paragraph as the ''Division'') that shall be made part of the Office of Minority Small Business and Capital Ownership Development. The Division shall be headed by a Director who shall report directly to the Associate Administrator for Minority Small Business and Capital Ownership Development. The Division shall establish field offices within such regional offices of the Administration as may be necessary to perform efficiently its functions and responsibilities.

(F) Subject to the provisions of section 637(a)(9) of this title, the functions and responsibility of the Division are to—

(i) receive, review and evaluate applications for certification pursuant to paragraphs (4), (5), (6) and (7) of section 637(a) of this title;

(ii) advise each program applicant within 15 days after the receipt of an application as to whether such application is complete and suitable for evaluation and, if not, what matters must be rectified;

(iii) render recommendations on such applications to the Associate Administrator for Minority Small Business and Capital Ownership Development;

(iv) review and evaluate financial statements and other submissions from concerns participating in the program established by paragraph (10) to ascertain continued eligibility to receive subcontracts pursuant to section 637(a) of this title;

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

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

(vii) decide protests regarding the status of a concern as a disadvantaged concern for purposes of any program or activity conducted under the authority of subsection (d) of section 637 of this title, or any other provision of Federal law that references such subsection for a definition of program eligibility; and

(viii) implement such policy directives as may be issued by the Associate Administrator

for Minority Small Business and Capital Ownership Development pursuant to subparagraph (I) regarding, among other things, the geographic distribution of concerns to be admitted to the program and the industrial make-up of such concerns.

(G) An applicant shall not be denied admission into the program established by paragraph (10) due solely to a determination by the Division that specific contract opportunities are unavailable to assist in the development of such concern unless—

(i) the Government has not previously procured and is unlikely to procure the types of products or services offered by the concern; or

(ii) the purchases of such products or services by the Federal Government will not be in quantities sufficient to support the developmental needs of the applicant and other Program Participants providing the same or similar items or services.

(H) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall certify a small business concern as a Program Participant or shall deny such application.

(I) Thirty days before the conclusion of each fiscal year, the Director of the Division shall review all concerns that have been admitted into the Program during the preceding 12-month period. The review shall ascertain the number of entrants, their geographic distribution and industrial classification. The Director shall also estimate the expected growth of the Program during the next fiscal year and the number of additional Business Opportunity Specialists, if any, that will be needed to meet the anticipated demand for the Program. The findings and conclusions of the Director shall be reported to the Associate Administrator for Minority Small Business and Capital Ownership Development by September 30 of each year. Based on such report and such additional data as may be relevant, the Associate Administrator shall, by October 31 of each year, issue policy and program directives applicable to such fiscal year that—

(i) establish priorities for the solicitation of program applications from underrepresented regions and industry categories;

(ii) assign staffing levels and allocate other program resources as necessary to meet program needs; and

(iii) establish priorities in the processing and admission of new Program Participants as may be necessary to achieve an equitable geographic distribution of concerns and a distribution of concerns across all industry categories in proportions needed to increase significantly contract awards to small business concerns owned and controlled by socially and economically disadvantaged individuals. When considering such increase the Administration shall give due consideration to those industrial categories where Federal purchases have been substantial but where the participation rate of such concerns has been limited.

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

(B) The developmental stage of program participation shall be designed to assist the concern in its effort to overcome its economic disadvantage by providing such assistance as may be necessary and appropriate to access its markets and to strengthen its financial and managerial skills.

(C) The transitional stage of program participation shall be designed to overcome, insofar as practicable, the remaining elements of economic disadvantage and to prepare such concern for graduation from the program.

(13) A Program Participant, if otherwise eligible, shall be qualified to receive the following assistance during the stages of program participation specified in paragraph 12:[9]

(A) Contract support pursuant to section 637(a) of this title.

(B) Financial assistance pursuant to subsection (a)(20) of this section.

(C) A maximum of two exemptions from the requirements of section 35(a)[10] of title 41, which exemptions shall apply only to contracts awarded pursuant to section 637(a) of this title and shall only be used to allow for contingent agreements by a small business concern to acquire the machinery, equipment, facilities, or labor needed to perform such contracts. No exemption shall be made pursuant to this subparagraph if the contract to which it pertains has an anticipated value in excess of $10,000,000. This subparagraph shall cease to be effective on October 1, 1992.

(D) A maximum of five exemptions from the requirements of sections 3131 and 3133 of title 40, which exemptions shall apply only to contracts awarded pursuant to section 637(a) of this title, except that, such exemptions may be granted under this subparagraph only if—

(i) the Administration finds that such concern is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue a bond subject to the guarantee provision of title IV of the Small Business Investment Act of 1958 (15 U.S.C. 692 et seq.);

(ii) the Administration and the agency providing the contracting opportunity have provided for the protection of persons furnishing materials or labor to the Program Participant by arranging for the direct disbursement of funds due to such persons by the procuring agency or through any bank the deposits of which are insured by the Federal Deposit Insurance Corporation; and

(iii) the contract to which it pertains does not exceed $3,000,000 in amount. This subparagraph shall cease to be effective on October 1, 1994.

(E) Financial assistance whereby the Administration may purchase in whole or in part, and on behalf of such concerns, skills training or upgrading for employees or potential employees of such concerns. Such assistance may be made without regard to section 647(a) of this title. Assistance may be made by direct

[9] So in original. Probably should be paragraph ''(12):''.

[10] See References in Text note below.

payment to the training provider or by reimbursing the Program Participant or the Participant's employee, if such reimbursement is found to be reasonable and appropriate. For purposes of this subparagraph the term ''training provider'' shall mean an institution of higher education, a community or vocational college, or an institution eligible to provide skills training or upgrading under title I of the Workforce Investment Act of 1998 [29 U.S.C. 2801 et seq.]. The Administration shall, in consultation with the Secretary of Labor, promulgate rules and regulations to implement this subparagraph that establish acceptable training and upgrading performance standards and provide for such monitoring or audit requirements as may be necessary to ensure the integrity of the training effort. No financial assistance shall be granted under the subparagraph unless the Administrator determines that—

(i) such concern has documented that it has first explored the use of existing cost-free or cost-subsidized training programs offered by public and private sector agencies working with programs of employment and training and economic development;

(ii) no more than five employees or potential employees of such concern are recipients of any benefits under this subparagraph at any one time;

(iii) no more than $2,500 shall be made available for any one employee or potential employee;

(iv) the length of training or upgrading financed by this subparagraph shall be no less than one month nor more than six months;

(v) such concern has given adequate assurance it will employ the trainee or upgraded employee for at least six months after the training or upgrading financed by this subparagraph has been completed and each trainee or upgraded employee has provided a similar assurance to remain within the employ of such concern for such period; if such concern, trainee, or upgraded employee breaches this agreement, the Administration shall be entitled to and shall make diligent efforts to obtain from the violating party the repayment of all funds expended on behalf of the violating party, such repayment shall be made to the Administration together with such interest and costs of collection as may be reasonable; the violating party shall be barred from receiving any further assistance under this subparagraph;

(vi) the training to be financed may take place either at such concern's facilities or at those of the training provider; and

(vii) such concern will maintain such records as the Administration deems appropriate to ensure that the provisions of this paragraph and any other applicable law have not been violated.

(F) The transfer of technology or surplus property owned by the United States to such a concern. Activities designed to effect such transfer shall be developed in cooperation with the heads of Federal agencies and shall include the transfer by grant, license, or sale of such technology or property to such a concern. Such property may be transferred to Program Participants on a priority basis. Technology or property transferred under this subparagraph shall be used by the concern during the normal conduct of its business operation and shall not be sold or transferred to any other party (other than the Government) during such concern's term of participation in the Program and for one year thereafter.

(G) Training assistance whereby the Administration shall conduct training sessions to assist individuals and enterprises eligible to receive contracts under section 637(a) of this title in the development of business principles and strategies to enhance their ability to successfully compete for contracts in the marketplace.

(H) Joint ventures, leader-follower arrangements, and teaming agreements between the Program Participant and other Program Participants and other business concerns with respect to contracting opportunities for the research, development, full-scale engineering or production of major systems. Such activities shall be undertaken on the basis of programs developed by the agency responsible for the procurement of the major system, with the assistance of the Administration.

(I) Transitional management business planning training and technical assistance.

(J) Program Participants in the developmental stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (C), (D), (E), (F), and (G).

(14) Program Participants in the transitional stage of Program participation shall be eligible for the assistance provided by subparagraphs (A), (B), (F), (G), (H), and (I) of paragraph (13).

(15) Subject to the provisions of paragraph (10)(C), a small business concern may receive developmental assistance under the Program and contracts under section 637(a) of this title for a total period of not longer than nine years, measured from the date of its certification under the authority of such section, of which—

(A) no more than four years may be spent in the developmental stage of Program Participation; and

(B) no more than five years may be spent in the transitional stage of Program Participation.

(16)(A) The Administrator shall develop and implement a process for the systematic collection of data on the operations of the Program established pursuant to paragraph (10).

(B) Not later than April 30 of each year, the Administrator shall submit a report to the Congress on the Program that shall include the following:

(i) The average personal net worth of individuals who own and control concerns that were initially certified for participation in the Program during the immediately preceding fiscal year. The Administrator shall also indicate the dollar distribution of net worths, at $50,000 increments, of all such individuals found to be socially and economically disadvantaged. For the first report required pursuant to this paragraph the Administrator shall also provide the data specified in the pre-

ceding sentence for all eligible individuals in the Program as of November 15, 1988.

(ii) A description and estimate of the benefits and costs that have accrued to the economy and the Government in the immediately preceding fiscal year due to the operations of those business concerns that were performing contracts awarded pursuant to section 637(a) of this title.

(iii) A compilation and evaluation of those business concerns that have exited the Program during the immediately preceding three fiscal years. Such compilation and evaluation shall detail the number of concerns actively engaged in business operations, those that have ceased or substantially curtailed such operations, including the reasons for such actions, and those concerns that have been acquired by other firms or organizations owned and controlled by other than socially and economically disadvantaged individuals. For those businesses that have continued operations after they exited from the Program, the Administrator shall also separately detail the benefits and costs that have accrued to the economy during the immediately preceding fiscal year due to the operations of such concerns.

(iv) A listing of all participants in the Program during the preceding fiscal year identifying, by State and by Region, for each firm: the name of the concern, the race or ethnicity, and gender of the disadvantaged owners, the dollar value of all contracts received in the preceding year, the dollar amount of advance payments received by each concern pursuant to contracts awarded under section 637(a) of this title, and a description including (if appropriate) an estimate of the dollar value of all benefits received pursuant to paragraphs (13) and (14) and subsection (a)(20) of this section during such year.

(v) The total dollar value of contracts and options awarded during the preceding fiscal year pursuant to section 637(a) of this title and such amount expressed as a percentage of total sales of (I) all firms participating in the Program during such year; and (II) of firms in each of the nine years of program participation.

(vi) A description of such additional resources or program authorities as may be required to provide the types of services needed over the next two-year period to service the expected portfolio of firms certified pursuant to section 637(a) of this title.

(vii) The total dollar value of contracts and options awarded pursuant to section 637(a) of this title, at such dollar increments as the Administrator deems appropriate, for each four digit standard industrial classification code under which such contracts and options were classified.

(C) The first report required by subparagraph (B) shall pertain to fiscal year 1990.

**(k) Functions relating to loans and financial assistance for projects providing technical or management assistance to individuals or enterprises eligible for assistance as small business concerns located in urban or rural areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals**

In carrying out its functions under subsections (i) and (j) of this section and section 637(a) of this title, the Administration is authorized—

(1) to utilize, with their consent, the services and facilities of Federal agencies without reimbursement, and, with the consent of any State or political subdivision of a State, accept and utilize the services and facilities of such State or subdivision without reimbursement;

(2) to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise;

(3) to accept voluntary and uncompensated services, notwithstanding the provisions of section 1342 of title 31; and

(4) to employ experts and consultants or organizations thereof as authorized by section 3109 of title 5, except that no individual may be employed under the authority of this subsection for more than one hundred days in any fiscal year; to compensate individuals so employed at rates not in excess of the daily equivalent of the highest rate payable under section 5332 of title 5, including traveltime; and to allow them, while away from their homes or regular places of business, travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for persons in the Government service employed intermittently, while so employed: *Provided, however*, That contracts for such employment may be renewed annually.

**(*l*) [RESERVED]**

**(m) Microloan Program**

**(1)(A) Purposes**

The purposes of the Microloan Program are—

(i) to assist women, low-income, veteran (within the meaning of such term under section 632(q) of this title), and minority entrepreneurs and business owners and other such individuals possessing the capability to operate successful business concerns;

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

(iii) to establish a microloan program to be administered by the Small Business Administration—

(I) to make loans to eligible intermediaries to enable such intermediaries to provide small-scale loans, particularly loans in amounts averaging not more than $10,000, to startup, newly established, or growing small business concerns for working capital or the acquisition of materials, supplies, or equipment;

(II) to make grants to eligible intermediaries that, together with non-Federal matching funds, will enable such intermediaries to provide intensive marketing, management, and technical assistance to microloan borrowers;

(III) to make grants to eligible nonprofit entities that, together with non-Federal matching funds, will enable such entities to provide intensive marketing, management, and technical assistance to assist low-income entrepreneurs and other low-income individuals obtain private sector financing for their businesses, with or without loan guarantees; and

(IV) to report to the Committees on Small Business of the Senate and the House of Representatives on the effectiveness of the microloan program and the advisability and feasibility of implementing such a program nationwide; and

(iv) to establish a welfare-to-work microloan initiative, which shall be administered by the Administration, in order to test the feasibility of supplementing the technical assistance grants provided under clauses (ii) and (iii) of subparagraph (B) to individuals who are receiving assistance under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), or under any comparable State funded means tested program of assistance for low-income individuals, in order to adequately assist those individuals in—

(I) establishing small businesses; and

(II) eliminating their dependence on that assistance.

**(B) Establishment**

There is established a microloan program, under which the Administration may—

(i) make direct loans to eligible intermediaries, as provided under paragraph (3), for the purpose of making short-term, fixed interest rate microloans to startup, newly established, and growing small business concerns under paragraph (6);

(ii) in conjunction with such loans and subject to the requirements of paragraph (4), make grants to such intermediaries for the purpose of providing intensive marketing, management, and technical assistance to small business concerns that are borrowers under this subsection; and

(iii) subject to the requirements of paragraph (5), make grants to nonprofit entities for the purpose of providing marketing, management, and technical assistance to low-income individuals seeking to start or enlarge their own businesses, if such assistance includes working with the grant recipient to secure loans in amounts not to exceed $35,000 from private sector lending institutions, with or without a loan guarantee from the nonprofit entity.

**(2) Eligibility for participation**

An intermediary shall be eligible to receive loans and grants under subparagraphs (B)(i) and (B)(ii) of paragraph (1) if it—

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

(B) has at least 1 year of experience making microloans to startup, newly established, or growing small business concerns and providing, as an integral part of its microloan program, intensive marketing, management, and technical assistance to its borrowers.

**(3) Loans to intermediaries**

**(A) Intermediary applications**

**(i) In general**

As part of its application for a loan, each intermediary shall submit a description to the Administration of—

(I) the type of businesses to be assisted;

(II) the size and range of loans to be made;

(III) the geographic area to be served and its economic, poverty, and unemployment characteristics;

(IV) the status of small business concerns in the area to be served and an analysis of their credit and technical assistance needs;

(V) any marketing, management, and technical assistance to be provided in connection with a loan made under this subsection;

(VI) the local economic credit markets, including the costs associated with obtaining credit locally;

(VII) the qualifications of the applicant to carry out the purpose of this subsection; and

(VIII) any plan to involve other technical assistance providers (such as counselors from the Service Corps of Retired Executives or small business development centers) or private sector lenders in assisting selected business concerns.

**(ii) Selection of intermediaries**

In selecting intermediaries to participate in the program established under this subsection, the Administration shall give priority to those applicants that provide loans in amounts averaging not more than $10,000.

**(B) Intermediary contribution**

As a condition of any loan made to an intermediary under subparagraph (B)(i) of paragraph (1), the Administration shall require the intermediary to contribute not less than 15 percent of the loan amount in cash from non-Federal sources.

**(C) Loan limits**

Notwithstanding subsection (a)(3) of this section, no loan shall be made under this subsection if the total amount outstanding and committed to one intermediary (excluding outstanding grants) from the business loan and investment fund established by this chapter would, as a result of such loan, exceed $750,000 in the first year of such intermediary's participation in the program, and $3,500,000 in the remaining years of the intermediary's participation in the program.

**(D)(i) In general**

The Administrator shall, by regulation, require each intermediary to establish a loan

loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid.

**(ii) Level of loan loss reserve fund**

**(I) In general**

Subject to subclause (III), the Administrator shall require the loan loss reserve fund of an intermediary to be maintained at a level equal to 15 percent of the outstanding balance of the notes receivable owed to the intermediary.

**(II) Review of loan loss reserve**

After the initial 5 years of an intermediary's participation in the program authorized by this subsection, the Administrator shall, at the request of the intermediary, conduct a review of the annual loss rate of the intermediary. Any intermediary in operation under this subsection prior to October 1, 1994, that requests a reduction in its loan loss reserve shall be reviewed based on the most recent 5-year period preceding the request.

**(III) Reduction of loan loss reserve**

Subject to the requirements of clause IV,[11] the Administrator may reduce the annual loan loss reserve requirement of an intermediary to reflect the actual average loan loss rate for the intermediary during the preceding 5-year period, except that in no case shall the loan loss reserve be reduced to less than 10 percent of the outstanding balance of the notes receivable owed to the intermediary.

**(IV) Requirements**

The Administrator may reduce the annual loan loss reserve requirement of an intermediary only if the intermediary demonstrates to the satisfaction of the Administrator that—

(aa) the average annual loss rate for the intermediary during the preceding 5-year period is less than 15 percent; and

(bb) that[12] no other factors exist that may impair the ability of the intermediary to repay all obligations owed to the Administration under this subsection.

**(E) Unavailability of comparable credit**

An intermediary may make a loan under this subsection of more than $20,000 to a small business concern only if such small business concern demonstrates that it is unable to obtain credit elsewhere at comparable interest rates and that it has good prospects for success. In no case shall an intermediary make a loan under this subsection of more than $35,000, or have outstanding or committed to any 1 borrower more than $35,000.

**(F) Loan duration; interest rates**

**(i) Loan duration**

Loans made by the Administration under this subsection shall be for a term of 10 years.

**(ii) Applicable interest rates**

Except as provided in clause (iii), loans made by the Administration under this subsection to an intermediary shall bear an interest rate equal to 1.25 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

**(iii) Rates applicable to certain small loans**

Loans made by the Administration to an intermediary that makes loans to small business concerns and entrepreneurs averaging not more than $7,500, shall bear an interest rate that is 2 percentage points below the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.

**(iv) Rates applicable to multiple sites or offices**

The interest rate prescribed in clause (ii) or (iii) shall apply to each separate loan-making site or office of 1 intermediary only if such site or office meets the requirements of that clause.

**(v) Rate basis**

The applicable rate of interest under this paragraph shall—

(I) be applied retroactively for the first year of an intermediary's participation in the program, based upon the actual lending practices of the intermediary as determined by the Administration prior to the end of such year; and

(II) be based in the second and subsequent years of an intermediary's participation in the program, upon the actual lending practices of the intermediary during the term of the intermediary's participation in the program.

**(vii)[13] Covered intermediaries**

The interest rates prescribed in this subparagraph shall apply to all loans made to intermediaries under this subsection on or after October 28, 1991.

**(G) Delayed payments**

The Administration shall not require repayment of interest or principal of a loan made to an intermediary under this subsection during the first year of the loan.

**(H) Fees; collateral**

Except as provided in subparagraphs (B) and (D), the Administration shall not charge any fees or require collateral other than an assignment of the notes receivable of the microloans with respect to any loan made to an intermediary under this subsection.

**(4) Marketing, management and technical assistance grants to intermediaries**

Grants made in accordance with subparagraph (B)(ii) of paragraph (1) shall be subject to the following requirements:

[11] So in original. Probably should be ''subclause (IV),''.

[12] So in original. The word ''that'' probably should not appear.

[13] So in original. Probably should be ''(vi)''.

**(A) Grant amounts**

Except as otherwise provided in subparagraph (C) and subject to subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. Except as provided in subparagraph (C), each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 25 percent of the total outstanding balance of loans made to it under this subsection.

**(B) Contribution**

As a condition of any grant made under subparagraph (A), the Administration shall require the intermediary to contribute an amount equal to 25 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

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

**(i) In general**

Each intermediary that has a portfolio of loans made under this subsection that averages not more than $10,000 during the period of the intermediary's participation in the program shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection, in addition to grants made under subparagraph (A).

**(ii) Purposes**

A grant awarded under clause (i) may be used to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection.

**(iii) Contribution exception**

The contribution requirements in subparagraph (B) do not apply to grants made under this subparagraph.

**(D) Eligibility for multiple sites or offices**

The eligibility for a grant described in subparagraph (A),[14] or (C) shall be determined separately for each loan-making site or office of 1 intermediary.

**(E) Assistance to certain small business concerns**

**(i) In general**

Each intermediary may expend an amount not to exceed 25 percent of the grant funds received under paragraph (1)(B)(ii) to provide information and technical assistance to small business concerns that are prospective borrowers under this subsection.

**(ii) Technical assistance**

An intermediary may expend not more than 25 percent of the funds received under paragraph (1)(B)(ii) to enter into third party contracts for the provision of technical assistance.

**(F) Supplemental grant**

**(i) In general**

The Administration may accept any funds transferred to the Administration from other departments or agencies of the Federal Government to make grants in accordance with this subparagraph and section 202(b) of the Small Business Reauthorization Act of 1997 to participating intermediaries and technical assistance providers under paragraph (5), for use in accordance with clause (iii) to provide additional technical assistance and related services to recipients of assistance under a State program described in paragraph (1)(A)(iv) at the time they initially apply for assistance under this subparagraph.

**(ii) Eligible recipients; grant amounts**

In making grants under this subparagraph, the Administration may select, from among participating intermediaries and technical assistance providers described in clause (i), not more than 20 grantees in fiscal year 1998, not more than 25 grantees in fiscal year 1999, and not more than 30 grantees in fiscal year 2000, each of whom may receive a grant under this subparagraph in an amount not to exceed $200,000 per year.

**(iii) Use of grant amounts**

Grants under this subparagraph—

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

(II) may be used by a grantee—

(aa) to pay or reimburse a portion of child care and transportation costs of recipients of assistance described in clause (i), to the extent such costs are not otherwise paid by State block grants under the Child Care Development Block Grant Act of 1990 (42 U.S.C. 9858 et seq.) or under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.); and

(bb) for marketing, management, and technical assistance to recipients of assistance described in clause (i).

**(iv) Memorandum of Understanding**

Prior to accepting any transfer of funds under clause (i) from a department or agency of the Federal Government, the Administration shall enter into a Memorandum of Understanding with the department or agency, which shall—

(I) specify the terms and conditions of the grants under this subparagraph; and

(II) provide for appropriate monitoring of expenditures by each grantee under this subparagraph and each recipient of assistance described in clause (i) who receives assistance from a grantee under this subparagraph, in order to ensure

[14] So in original. The comma probably should not appear.

compliance with this subparagraph by those grantees and recipients of assistance.

**(5) Private sector borrowing technical assistance grants**

Grants made in accordance with subparagraph (B)(iii) of paragraph (1) shall be subject to the following requirements:

**(A) Grant amounts**

Subject to the requirements of subparagraph (B), the Administration may make not more than 55 grants annually, each in amounts not to exceed $200,000 for the purposes specified in subparagraph (B)(iii) of paragraph (1).

**(B) Contribution**

As a condition of any grant made under subparagraph (A), the Administration shall require the grant recipient to contribute an amount equal to 20 percent of the amount of the grant, obtained solely from non-Federal sources. In addition to cash or other direct funding, the contribution may include indirect costs or in-kind contributions paid for under non-Federal programs.

**(6) Loans to small business concerns from eligible intermediaries**

**(A) In general**

An eligible intermediary shall make short-term, fixed rate loans to startup, newly established, and growing small business concerns from the funds made available to it under subparagraph (B)(i) of paragraph (1) for working capital and the acquisition of materials, supplies, furniture, fixtures, and equipment.

**(B) Portfolio requirement**

To the extent practicable, each intermediary that operates a microloan program under this subsection shall maintain a microloan portfolio with an average loan size of not more than $15,000.

**(C) Interest limit**

Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received, or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall not exceed the rate of interest applicable to a loan made to an intermediary by the Administration—

(i) in the case of a loan of more than $7,500 made by the intermediary to a small business concern or entrepreneur by more than 7.75 percentage points; and

(ii) in the case of a loan of not more than $7,500 made by the intermediary to a small business concern or entrepreneur by more than 8.5 percentage points.

**(D) Review restriction**

The Administration shall not review individual microloans made by intermediaries prior to approval.

**(E) Establishment of child care or transportation businesses**

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

**(7) Program funding for microloans**

**(A) Number of participants**

Under the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 300 intermediaries.

**(B) Allocation**

**(i) Minimum allocation**

Subject to the availability of appropriations, of the total amount of new loan funds made available for award under this subsection in each fiscal year, the Administration shall make available for award in each State (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) an amount equal to the sum of—

(I) the lesser of—

(aa) $800,000; or

(bb) 1/55 of the total amount of new loan funds made available for award under this subsection for that fiscal year; and

(II) any additional amount, as determined by the Administration.

**(ii) Redistribution**

If, at the beginning of the third quarter of a fiscal year, the Administration determines that any portion of the amount made available to carry out this subsection is unlikely to be made available under clause (i) during that fiscal year, the Administration may make that portion available for award in any one or more States (including the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa) without regard to clause (i).

**(8) Equitable distribution of intermediaries**

In approving microloan program applicants and providing funding to intermediaries under this subsection, the Administration shall select and provide funding to such intermediaries as will ensure appropriate availability of loans for small businesses in all industries located throughout each State, particularly those located in urban and in rural areas.

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

**(A) In general**

The Administration may procure technical assistance for intermediaries participating in the Microloan Program to ensure that such intermediaries have the knowledge, skills, and understanding of microlending practices necessary to operate successful microloan programs.

**(B) Assistance amount**

The Administration shall transfer 7 percent of its annual appropriation for loans

and loan guarantees under this subsection to the Administration's Salaries and Expense Account for the specific purpose of providing 1 or more technical assistance grants to experienced microlending organizations and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing.[15] to achieve the purpose set forth in subparagraph (A).

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

Of amounts made available to carry out the welfare-to-work microloan initiative under paragraph (1)(A)(iv) in any fiscal year, the Administration may use not more than 5 percent to provide technical assistance, either directly or through contractors, to welfare-to-work microloan initiative grantees, to ensure that, as grantees, they have the knowledge, skills, and understanding of microlending and welfare-to-work transition, and other related issues, to operate a successful welfare-to-work microloan initiative.

**(10) Report to Congress**

On November 1, 1995, the Administration shall submit to the Committees on Small Business of the Senate and the House of Representatives a report, including the Administration's evaluation of the effectiveness of the first 3½ years of the microloan program and the following:

(A) the numbers and locations of the intermediaries funded to conduct microloan programs;

(B) the amounts of each loan and each grant to intermediaries;

(C) a description of the matching contributions of each intermediary;

(D) the numbers and amounts of microloans made by the intermediaries to small business concern borrowers;

(E) the repayment history of each intermediary;

(F) a description of the loan portfolio of each intermediary including the extent to which it provides microloans to small business concerns in rural areas; and

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

**(11) Definitions**

For purposes of this subsection—

(A) the term ''intermediary'' means—

(i) a private, nonprofit entity;

(ii) a private, nonprofit community development corporation;

(iii) a consortium of private, nonprofit organizations or nonprofit community development corporations;

(iv) a quasi-governmental economic development entity (such as a planning and development district), other than a State, county, municipal government, or any agency thereof, if—

(I) no application is received from an eligible nonprofit organization; or

(II) the Administration determines that the needs of a region or geographic area are not adequately served by an existing, eligible nonprofit organization that has submitted an application; or

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

that seeks to borrow or has borrowed funds from the Administration to make microloans to small business concerns under this subsection;

(B) the term ''microloan'' means a short-term, fixed rate loan of not more than $35,000, made by an intermediary to a start-up, newly established, or growing small business concern;

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

(i) in a nonmetropolitan county (as defined by the Secretary of Agriculture) or its equivalent thereof; or

(ii) in a metropolitan county or its equivalent that has a resident population of less than 20,000 if the Small Business Administration has determined such political subdivision or area to be rural.

**(12) Deferred participation loan pilot**

In lieu of making direct loans to intermediaries as authorized in paragraph (1)(B), during fiscal years 1998 through 2000, the Administration may, on a pilot program basis, participate on a deferred basis of not less than 90 percent and not more than 100 percent on loans made to intermediaries by a for-profit or nonprofit entity or by alliances of such entities, subject to the following conditions:

**(A) Number of loans**

In carrying out this paragraph, the Administration shall not participate in providing financing on a deferred basis to more than 10 intermediaries in urban areas or more than 10 intermediaries in rural areas.

**(B) Term of loans**

The term of each loan shall be 10 years. During the first year of the loan, the intermediary shall not be required to repay any interest or principal. During the second through fifth years of the loan, the intermediary shall be required to pay interest only. During the sixth through tenth years of the loan, the intermediary shall be required to make interest payments and fully amortize the principal.

**(C) Interest rate**

The interest rate on each loan shall be the rate specified by paragraph (3)(F) for direct loans.

**(13) Evaluation of welfare-to-work microloan initiative**

On January 31, 1999, and annually thereafter, the Administration shall submit to the Committees on Small Business of the House of Representatives and the Senate a report on any monies distributed pursuant to paragraph (4)(F).

[15] So in original. The period probably should not appear.

**(n) Repayment deferred for active duty reservists**

**(1) Definitions**

In this subsection:

**(A) 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.

**(B) Essential employee**

The term ''essential employee'' means an individual who is employed by a small business concern and whose managerial or technical expertise is critical to the successful day-to-day operations of that small business concern.

**(C) Period of military conflict**

The term ''period of military conflict'' means—

(i) a period of war declared by the Congress;

(ii) a period of national emergency declared by the Congress or by the President; or

(iii) a period of a contingency operation, as defined in section 101(a) of title 10.

**(D) Qualified borrower**

The term ''qualified borrower'' means—

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

(ii) a small business concern that received a direct loan under subsection (a) or (b) of this section before an eligible reservist, who is an essential employee, was ordered to active duty.

**(2) Deferral of direct loans**

**(A) In general**

The Administration shall, upon written request, defer repayment of principal and interest due on a direct loan made under subsection (a) or (b) of this section, if such loan was incurred by a qualified borrower.

**(B) Period of deferral**

The period of deferral for repayment under this paragraph shall begin on the date on which the eligible reservist is ordered to active duty and shall terminate on the date that is 180 days after the date such eligible reservist is discharged or released from active duty.

**(C) Interest rate reduction during deferral**

Notwithstanding any other provision of law, during the period of deferral described in subparagraph (B), the Administration may, in its discretion, reduce the interest rate on any loan qualifying for a deferral under this paragraph.

**(3) Deferral of loan guarantees and other financings**

The Administration shall—

(A) encourage intermediaries participating in the program under subsection (m) of this section to defer repayment of a loan made with proceeds made available under that subsection, if such loan was incurred by a small business concern that is eligible to apply for assistance under subsection (b)(3) of this section; and

(B) not later than 30 days after August 17, 1999, establish guidelines to—

(i) encourage lenders and other intermediaries to defer repayment of, or provide other relief relating to, loan guarantees under subsection (a) of this section and financings under section 697a of this title that were incurred by small business concerns that are eligible to apply for assistance under subsection (b)(3) of this section, and loan guarantees provided under subsection (m) of this section if the intermediary provides relief to a small business concern under this paragraph; and

(ii) implement a program to provide for the deferral of repayment or other relief to any intermediary providing relief to a small business borrower under this paragraph.

(Pub. L. 85–536, §2[7], July 18, 1958, 72 Stat. 387; Pub. L. 85–699, title VI, §602(c), Aug. 21, 1958, 72 Stat. 698; Pub. L. 86–367, §2, Sept. 22, 1959, 73 Stat. 647; Pub. L. 87–70, title III, §305[a], June 30, 1961, 75 Stat. 167; Pub. L. 87–305, §9, Sept. 26, 1961, 75 Stat. 668; Pub. L. 88–264, §1, Feb. 5, 1964, 78 Stat. 7; Pub. L. 88–560, title III, §319, Sept. 2, 1964, 78 Stat. 794; Pub. L. 89–59, §1(a), (b), June 30, 1965, 79 Stat. 206; Pub. L. 89–409, §3(a), May 2, 1966, 80 Stat. 133; Pub. L. 89–769, §7(b), Nov. 6, 1966, 80 Stat. 1319; Pub. L. 90–104, title I, §§103, 104, Oct. 11, 1967, 81 Stat. 268; Pub. L. 90–448, title XI, §1106(a), Aug. 1, 1968, 82 Stat. 567; Pub. L. 90–495, §31, Aug. 23, 1968, 82 Stat. 835; Pub. L. 91–173, title V, §504(a), (b), Dec. 30, 1969, 83 Stat. 802; Pub. L. 91–596, §28(a), (b), Dec. 29, 1970, 84 Stat. 1618; Pub. L. 91–597, §25(a), (b), Dec. 29, 1970, 84 Stat. 1633, 1634; Pub. L. 92–385, §§1(a), 2(a), Aug. 16, 1972, 86 Stat. 554, 555; Pub. L. 92–500, §8(a), Oct. 18, 1972, 86 Stat. 898; Pub. L. 92–595, §3(b), Oct. 27, 1972, 86 Stat. 1316; Pub. L. 93–237, §§2(a), (b), 3(a), 5, 6, Jan. 2, 1974, 87 Stat. 1023, 1024; Pub. L. 93–386, §§2(a)(4), 3(2), 8, 9, 12, Aug. 23, 1974, 88 Stat. 742, 746, 748, 749; Pub. L. 94–305, title I, §§108(b), 109, 111, 112(c), (d), 114, June 4, 1976, 90 Stat. 666, 667; Pub. L. 95–89, title I, §101(d), (e), title III, §§301, 302, title IV, §§402–405, Aug. 4, 1977, 91 Stat. 553, 558–560; Pub. L. 95–315, §§2, 3, July 4, 1978, 92 Stat. 377, 378; Pub. L. 95–507, title II, §§204, 205, 231, Oct. 24, 1978, 92 Stat. 1764, 1766, 1772; Pub. L. 95–510, §104, Oct. 24, 1978, 92 Stat. 1782; Pub. L. 96–38, title I, §101(a), (b), July 25, 1979, 93 Stat. 118; Pub. L. 96–302, title I, §§119(a), (b), 122–124, title II, §203, title V, §505, July 2, 1980, 94 Stat. 840, 841, 843, 848, 852; Pub. L. 96–481, title I, §§104, 106(a), 107, 112, Oct. 21, 1980, 94 Stat. 2322, 2323; Pub. L. 97–35, title XIX, §§1902, 1910–1912, 1913(a), (c), 1914, Aug. 13, 1981, 95 Stat. 767, 778–780; Pub. L. 98–270, title III, §§301, 304, 308, 309, 311, Apr. 18, 1984, 98 Stat. 159–161; Pub. L. 98–395, §5, Aug. 21, 1984, 98 Stat. 1368; Pub. L. 99–272, title XVIII, §§18006(a)(1), (2), 18007, 18013, Apr. 7, 1986, 100 Stat. 366, 370; Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 100–418, title VIII, §§8005, 8007(a), Aug. 23, 1988, 102 Stat. 1557, 1559; Pub. L. 100–533, title III, §302(a), Oct. 25, 1988, 102 Stat. 2693; Pub. L. 100–590, title I,

§§ 102(a), 103, 111(c), 119(a), 120–122, Nov. 3, 1988, 102 Stat. 2992, 2995, 2999, 3000; Pub. L. 100–656, title II, §§ 201(a), 202, 203, 205, 206, 208, title III, §§ 301–303(a), title IV, § 408, title V, § 505(h), Nov. 15, 1988, 102 Stat. 3856, 3858, 3859, 3861, 3862, 3865–3868, 3877, 3887; Pub. L. 100–707, title I, § 109(f), Nov. 23, 1988, 102 Stat. 4708; Pub. L. 101–37, §§ 4–6(a), 7(a), 8–10(b), June 15, 1989, 103 Stat. 70–73; Pub. L. 101–162, title V, (1), (2), Nov. 21, 1989, 103 Stat. 1024, 1025; Pub. L. 101–574, title II, §§ 202, 204(a), 206, 242, 245, title III, § 307, Nov. 15, 1990, 104 Stat. 2818–2820, 2827, 2830; Pub. L. 102–140, title VI, § 609(b), (h), Oct. 28, 1991, 105 Stat. 825, 827; Pub. L. 102–191, § 4, Dec. 5, 1991, 105 Stat. 1591; Pub. L. 102–366, title I, §§ 104, 113(a), title II, § 211, Sept. 4, 1992, 106 Stat. 988, 989, 997; Pub. L. 102–564, title III, § 307(b), (c), Oct. 28, 1992, 106 Stat. 4263, 4264; Pub. L. 103–81, §§ 4, 5(a), 8, Aug. 13, 1993, 107 Stat. 781, 782; Pub. L. 103–403, title II, §§ 201, 202, 204–208(b), 209–211, title VI, §§ 603–605(a), Oct. 22, 1994, 108 Stat. 4180–4183, 4202, 4203; Pub. L. 104–36, §§ 2–4(a), 5, Oct. 12, 1995, 109 Stat. 295–297; Pub. L. 104–208, div. D, title I, §§ 103(a)–(d), (f), 105, 107, 111, Sept. 30, 1996, 110 Stat. 3009–726, 3009–727, 3009–731 to 3009–733; Pub. L. 105–135, title II, §§ 201, 202(a), 231, title VII, § 706, Dec. 2, 1997, 111 Stat. 2597, 2598, 2606, 2637; Pub. L. 105–277, div. A, § 101(f) [title VIII, § 405(d)(10), (f)(9)], Oct. 21, 1998, 112 Stat. 2681–337, 2681–420, 2681–430; Pub. L. 106–8, § 3(a), (c), Apr. 2, 1999, 113 Stat. 13, 16; Pub. L. 106–22, §§ 2, 3, Apr. 27, 1999, 113 Stat. 36, 37; Pub. L. 106–24, § 1(a), Apr. 27, 1999, 113 Stat. 39; Pub. L. 106–50, title IV, §§ 401(b), 402(a), (b), 403, 404, Aug. 17, 1999, 113 Stat. 244–246; Pub. L. 106–554, § 1(a)(9) [title II, §§ 202–208(a), 210, title VIII, § 802(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–681 to 2763A–684, 2763A–702; Pub. L. 107–100, § 6(a), Dec. 21, 2001, 115 Stat. 970; Pub. L. 108–447, div. K, title I, §§ 101(a), 102, 103(a), 107(a), (b), Dec. 8, 2004, 118 Stat. 3442–3446.)

REFERENCES IN TEXT

Subsections (b) and (c) of section 631 of this title, referred to in subsecs. (a)(11) and (i)(1), were redesignated subsections (c) and (d), respectively, and a new subsection (b) was added by Pub. L. 100–418, title VIII, § 8002, Aug. 23, 1988, 102 Stat. 1553.

The Small Business Investment Act of 1958, referred to in subsecs. (a)(13) and (j)(10)(A)(vi), (13)(D)(i), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended. Title IV, part B of title IV, and title V of the Act are classified generally to subchapter IV–A (§ 692 et seq.), part B (§ 694a et seq.) of subchapter IV–A, and subchapter V (§ 695 et seq.), respectively, of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Trade Act of 1974, referred to in subsec. (a)(16)(E), is Pub. L. 93–618, Jan. 3, 1975, 88 Stat. 1978, as amended. Chapter 3 of title II of the Act is classified generally to part 3 (§ 2341 et seq.) of subchapter II of chapter 12 of Title 19, Customs Duties. For complete classification of this Act to the Code, see section 2101 of Title 19 and Tables.

The Disaster Relief and Emergency Assistance Act, referred to in subsec. (b)(2)(A), is Pub. L. 93–288, May 22, 1974, 88 Stat. 143, as amended, known as the Robert T. Stafford Disaster Relief and Emergency Assistance Act, which is classified principally to chapter 68 (§ 5121 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of Title 42 and Tables.

The Consolidated Farm and Rural Development Act (7 U.S.C. 1961), referred to in subsec. (b)(2)(B), was in the original the ''Consolidated Farmers Home Administration Act of 1961 (7 U.S.C. 1961)'', Pub. L. 87–128, title III, Aug. 8, 1961, 75 Stat. 307, which was redesignated the Consolidated Farm and Rural Development Act by Pub. L. 92–419, § 101, Aug. 30, 1972, 86 Stat. 657. The Consolidated Farm and Rural Development Act is classified principally to chapter 50 (§ 1921 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 1921 of Title 7 and Tables.

Paragraph (4) of this subsection, referred to in second undesignated par. following par. (2) of subsec. (b), was repealed by Pub. L. 97–35.

Section 231 of the Disaster Relief Act of 1970 [15 U.S.C. 636a], referred to in penultimate par. of subsec. (b), was repealed by Pub. L. 97–35, title XIX, § 1917, Aug. 13, 1981, 95 Stat. 781.

Reorganization Plan Numbered 2 of 1954, referred to in subsec. (c)(1), is set out in the Appendix to Title 5, Government Organization and Employees.

Reorganization Plan Numbered 1 of 1957, referred to in subsec. (c)(1), is set out in the Appendix to Title 5.

The Economic Opportunity Act of 1964, referred to in subsec. (i)(3), is Pub. L. 88–452, Aug. 20, 1964, 78 Stat. 508, as amended. Title III of the Act was classified generally to subchapter III (§ 2841 et seq.) of chapter 34 of Title 42, The Public Health and Welfare, prior to its repeal by Pub. L. 97–35, title VI, § 683(a), Aug. 13, 1981, 95 Stat. 519. For complete classification of this Act to the Code, see Tables.

The Public Works and Economic Development Act of 1965, referred to in subsec. (i)(5)(D), is Pub. L. 89–136, Aug. 26, 1965, 79 Stat. 552, as amended, which is classified generally to chapter 38 (§ 3121 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of Title 42 and Tables.

Section 602(b) of Public Law 100–656, the ''Business Opportunity Development Reform Act of 1988'', referred to in subsec. (j)(10)(J)(ii)(III), is set out as a note under section 637 of this title.

Section 35(a) of title 41, referred to in subsec. (j)(13)(C), was struck out and former section 35(b) of title 41 redesignated section 35(a) by Pub. L. 103–355, title VII, § 7201(1), Oct. 13, 1994, 108 Stat. 3378.

The Workforce Investment Act of 1998, referred to in subsec. (j)(13)(E), is Pub. L. 105–220, Aug. 7, 1998, 112 Stat. 936, as amended. Title I of the Act is classified principally to chapter 30 (§ 2801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 9201 of Title 20, Education, and Tables.

The Social Security Act, referred to in subsec. (m)(1)(A)(iv), (4)(F)(iii)(II)(aa), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

Paragraph (10), referred to in subsec. (m)(2)(A), was redesignated paragraph (11) by Pub. L. 102–366, title I, § 113(a)(8), Sept. 4, 1992, 106 Stat. 992.

Section 202(b) of the Small Business Reauthorization Act of 1997, referred to in subsec. (m)(4)(F)(i), is section 202(b) of Pub. L. 105–135, which is set out as a note below.

The Child Care and Development Block Grant Act of 1990, referred to in subsec. (m)(4)(F)(iii)(II)(aa), is subchapter C (§§ 658A–658R) of chapter 8 of subtitle A of title VI of Pub. L. 97–35, as added by Pub. L. 101–508, title V, § 5082(2), Nov. 5, 1990, 104 Stat. 1388–236, as amended, which is classified generally to subchapter II–B (§ 9858 et seq.) of chapter 105 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 9801 of Title 42 and Tables.

CODIFICATION

September 30, 1996, referred to in subsec. (a)(25)(C), was in the original ''the date of enactment of this sub-

section'' which was translated as meaning the date of enactment of Pub. L. 104–208, which enacted par. (25) of subsec. (a), to reflect the probable intent of Congress.

In subsec. (c)(3), ''August 13, 1981'' substituted for ''the effective date of this Act'', such words having been inserted in place of ''to October 1, 1983'' by section 1914 of Pub. L. 97–35. ''This Act'' probably meant the Small Business Budget Reconciliation and Loan Consolidation/Improvement Act of 1981 (title XIX of Pub. L. 97–35) rather than the Small Business Act (Pub. L. 85–536). See Effective Date of 1981 Amendment note set out under section 631 of this title.

In subsec. (j)(11)(B)(i), as enacted by the amendments made by Pub. L. 101–37, ''August 15, 1989'' substituted for ''the effective date of this subparagraph'' and ''such effective date''. Section 32 of Pub. L. 101–37 provided that the amendments made by Pub. L. 101–37 shall apply as if included in Pub. L. 100–656. Section 803(b)(1)(A) of Pub. L. 101–656 provided that the amendment made by section 201(a) thereof to subsec. (j)(11) shall take effect on June 1, 1989. Section 31 of Pub. L. 101–37 amended section 803(b) of Pub. L. 101–656 to make such amendments effective on August 15, 1989, in place of June 1, 1989. See 1988 and 1989 Effective Date of Amendment notes below.

''Sections 3131 and 3133 of title 40'' substituted in subsec. (j)(13)(D) for ''the Act entitled 'An Act requiring contracts for the construction, alteration and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by an additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public works', approved August 24, 1935 (49 Stat. 793)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

In subsec. (k)(3), ''section 1342 of title 31'' substituted for ''section 3679(b) of the Revised Statutes (31 U.S.C. 665(b))'' 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.

Section 3109 of title 5, referred to in subsec. (k)(4), substituted for ''section 15 of the Administrative Expenses Act of 1946 (5 U.S.C. 55a)'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section 5703 of title 5, referred to in subsec. (k)(4), substituted for ''section 5 of such Act (5 U.S.C. 73b–2)'' on authority of section 7(b) of Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5.

### Prior Provisions

Provisions similar to those comprising subsec. (e) of this section were contained in section 2(a) and (b) of Pub. L. 87–550, July 25, 1962, 76 Stat. 221 (formerly classified to section 637a(a) and (b) of this title) prior to repeal thereof by section 3(b) of Pub. L. 89–409.

Prior similar provisions were contained in section 207 of act July 30, 1953, ch. 282, title II, 67 Stat. 235, as amended by acts Aug. 9, 1955, ch. 628, §§ 2, 5, 69 Stat. 547; Feb. 2, 1956, ch. 29, §§ 2, 3, 70 Stat. 10; Pub. L. 85–335, Feb. 22, 1958, 72 Stat. 27, which was previously classified to this section. See Codification note set out under section 631 of this title.

### Amendments

2004—Subsec. (a)(3)(A). Pub. L. 108–447, § 103(a), substituted ''$1,500,000'' for ''$1,000,000''.

Subsec. (a)(3)(B). Pub. L. 108–447, § 107(b), substituted ''$1,750,000'' for ''$1,250,000'' and ''$1,250,000'' for ''$750,000''.

Subsec. (a)(16). Pub. L. 108–447, § 107(a), inserted heading and amended par. (16) generally. Prior to amendment, par. (16) provided that the Administration could guarantee loans to assist any eligible small business concern in an industry engaged in or adversely affected by international trade in the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade.

Subsec. (a)(18)(A). Pub. L. 108–447, § 102(a), amended heading and text of subpar. (A) generally. Prior to amendment, text read as follows: ''With respect to each loan guaranteed under this subsection (other than a loan that is repayable in 1 year or less), the Administration shall collect a guarantee fee, which shall be payable by the participating lender, and may be charged to the borrower, as follows:

''(i) A guarantee fee equal to 2 percent of the deferred participation share of a total loan amount that is not more than $150,000.

''(ii) A guarantee fee equal to 3 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

''(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.''

Subsec. (a)(18)(C). Pub. L. 108–447, § 102(b), struck out heading and text of subpar. (C). Text read as follows: ''With respect to loans approved during the 2-year period beginning on October 1, 2002, the guarantee fee under subparagraph (A) shall be as follows:

''(i) A guarantee fee equal to 1 percent of the deferred participation share of a total loan amount that is not more than $150,000.

''(ii) A guarantee fee equal to 2.5 percent of the deferred participation share of a total loan amount that is more than $150,000, but not more than $700,000.

''(iii) A guarantee fee equal to 3.5 percent of the deferred participation share of a total loan amount that is more than $700,000.''

Subsec. (a)(23). Pub. L. 108–447, § 102(c)(1), substituted ''Yearly'' for ''Annual'' in heading.

Subsec. (a)(23)(A). Pub. L. 108–447, § 102(c)(2), added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: ''With respect to each loan guaranteed under this subsection, the Administration shall, in accordance with such terms and procedures as the Administration shall establish by regulation, assess and collect an annual fee in an amount equal to 0.5 percent of the outstanding balance of the deferred participation share of the loan. With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.''

Subsec. (a)(23)(B). Pub. L. 108–447, § 102(c)(3), substituted ''yearly'' for ''annual''.

Subsec. (a)(23)(C). Pub. L. 108–447, § 102(c)(4), added subpar. (C).

Subsec. (a)(31). Pub. L. 108–447, § 101(a), added par. (31).

2001—Subsec. (a)(18)(C). Pub. L. 107–100, § 6(a)(1), added subpar. (C).

Subsec. (a)(23)(A). Pub. L. 107–100, § 6(a)(2), inserted at end ''With respect to loans approved during the 2-year period beginning on October 1, 2002, the annual fee assessed and collected under the preceding sentence shall be in an amount equal to 0.25 percent of the outstanding balance of the deferred participation share of the loan.''

2000—Subsec. (a)(2)(A)(i). Pub. L. 106–554, § 1(a)(9) [title II, § 202(1)], substituted ''$150,000'' for ''$100,000''.

Subsec. (a)(2)(A)(ii). Pub. L. 106–554, § 1(a)(9) [title II, § 202(2)], substituted ''85 percent'' for ''80 percent'' and ''$150,000'' for ''$100,000''.

Subsec. (a)(3)(A). Pub. L. 106–554, § 1(a)(9) [title II, § 203], substituted ''$1,000,000 (or if the gross loan amount would exceed $2,000,000),'' for ''$750,000,''.

Subsec. (a)(4). Pub. L. 106–554, § 1(a)(9) [title II, § 205(1)], inserted heading and struck out former heading ''Interest rates and fees.—''.

Subsec. (a)(4)(B)(iii). Pub. L. 106–554, § 1(a)(9) [title II, § 204], added cl. (iii).

Subsec. (a)(4)(C). Pub. L. 106–554, § 1(a)(9) [title II, § 205(2)], added subpar. (C).

Subsec. (a)(18). Pub. L. 106–554, §1(a)(9) [title II, §206], amended heading and text of par. (18) generally, substituting present provisions for provisions which had authorized guarantee fee in an amount equal to sum of 3 percent of amount of deferred participation share of loan that was less than or equal to $250,000, if deferred participation share of loan exceeded $250,000, plus 3.5 percent of difference between $500,000 or total deferred participation share of loan, whichever was less, and $250,000, plus, if deferred participation share of loan exceeded $500,000, 3.875 percent of difference between total deferred participation share of loan and $500,000, and set forth provisions relating to exception for certain loans.

Subsec. (a)(28). Pub. L. 106–554, §1(a)(9) [title II, §207], added par. (28).

Subsec. (a)(29). Pub. L. 106–554, §1(a)(9) [title II, §208(a)], added par. (29).

Subsec. (a)(30). Pub. L. 106–554, §1(a)(9) [title VIII, §802(a)], added par. (30).

Subsec. (m)(1)(A)(iii)(I). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(2)], substituted ''$10,000'' for ''$7,500''.

Subsec. (m)(1)(B)(iii). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(1)], substituted ''$35,000'' for ''$25,000''.

Subsec. (m)(3)(A)(ii). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(2)], substituted ''$10,000'' for ''$7,500''.

Subsec. (m)(3)(E). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(1), (3)], substituted ''$20,000'' for ''$15,000'' and ''$35,000'' for ''$25,000'' in two places.

Subsec. (m)(4)(C)(i). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(2)], which directed the amendment of subsec. (m)(4)(C)(i)(II) by substituting ''$10,000'' for ''$7,500'', was executed by making the substitution in subsec. (m)(4)(C)(i) to reflect the probable intent of Congress and the termination of the temporary amendment by Pub. L. 103–403, §208(a)(2), (c). See 1994 Amendment note and Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(5)(A). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(4)], substituted ''55 grants'' for ''25 grants'' and ''$200,000'' for ''$125,000''.

Subsec. (m)(6)(B). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(5)], substituted ''$15,000'' for ''$10,000''.

Subsec. (m)(7)(A). Pub. L. 106–554, §1(a)(9) [title II, §210(a)(6)], added subpar. (A) and struck out heading and text of former subpar. (A). Text read as follows: ''During the program authorized by this subsection, the Administration may fund, on a competitive basis, not more than 200 microloan programs.''

Subsec. (m)(11)(B). Pub. L. 106–554, §1(a)(9) [title II, §210(b)], substituted ''$35,000'' for ''$25,000''.

1999—Subsec. (a)(10). Pub. L. 106–50, §401(b), inserted ''guaranteed'' after ''provide'' and '', including service-disabled veterans,'' after ''handicapped individual''.

Subsec. (a)(21)(A)(ii). Pub. L. 106–50, §404, inserted ''or a veteran'' after ''qualified individual''.

Subsec. (a)(27). Pub. L. 106–8, §3(a), (c), temporarily added par. (27) relating to Year 2000 computer problem program. See Effective and Termination Dates of 1999 Amendments note below.

Subsec. (b)(1)(C). Pub. L. 106–24, §1(a), added subpar. (C).

Subsec. (b)(3). Pub. L. 106–50, §402(b), added par. (3).

Subsec. (m)(1)(A)(i). Pub. L. 106–50, §403, inserted ''veteran (within the meaning of such term under section 632(q) of this title),'' after ''low-income,''.

Subsec. (m)(3)(D). Pub. L. 106–22, §3, struck out subpar. (D) heading and amended text generally. Prior to amendment, text read as follows: ''The Administration shall, by regulation, require each intermediary to establish a loan loss reserve fund, and to maintain such reserve fund until all obligations owed to the Administration under this subsection are repaid. The Administration shall require the loan loss reserve fund to be maintained—

''(i) during the initial 5 years of the intermediary's participation in the program under this subsection, at a level equal to not more than 15 percent of the outstanding balance of the notes receivable owed to the intermediary; and

''(ii) in each year of participation thereafter, at a level equal to not more than the greater of—

''(I) 2 times an amount reflecting the total losses of the intermediary as a result of participation in the program under this subsection, as determined by the Administrator on a case-by-case basis; or

''(II) 10 percent of the outstanding balance of the notes receivable owed to the intermediary.''

Subsec. (m)(7)(B). Pub. L. 106–22, §2(1), added subpar. (B) and struck out heading and text of former subpar. (B). Text read as follows: ''During any fiscal year, a State shall not receive new loan funds from the Administration that exceed 125 percent of the State's pro rata share of the microloan program authorization during such fiscal year, such share to be based on the population of the State, as compared to the total population of the United States. If, however, at the beginning of the fourth quarter of a fiscal year the Administration determines that a portion of appropriated microloan funds are unlikely to be awarded during that year, the Administration may make additional funds available to a State in excess of 125 percent of the pro rata share of that State.''

Subsec. (m)(8). Pub. L. 106–22, §2(2), inserted ''and providing funding to intermediaries'' after ''program applicants'' and ''and provide funding to'' after ''shall select''.

Subsec. (n). Pub. L. 106–50, §402(a), added subsec. (n).

1998—Subsec. (j)(13)(E). Pub. L. 105–277, §101(f) [title VIII, §405(f)(9)], struck out ''the Job Training Partnership Act or'' before ''title I of the Workforce'' in introductory provisions.

Pub. L. 105–277, §101(f) [title VIII, §405(d)(10)], substituted ''the Job Training Partnership Act or title I of the Workforce Investment Act of 1998'' for ''the Job Training Partnership Act (29 U.S.C. 1501 et seq.)''.

1997—Subsec. (a). Pub. L. 105–135, §231(1), inserted heading.

Subsec. (a)(1). Pub. L. 105–135, §231(2), inserted heading, designated existing provisions as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (a)(8). Pub. L. 105–135, §706, added par. (8).

Subsec. (m). Pub. L. 105–135, §201(c), struck out ''Demonstration'' and ''demonstration'' wherever appearing in heading and text.

Subsec. (m)(1)(A)(iv). Pub. L. 105–135, §202(a)(1), added cl. (iv).

Subsec. (m)(3)(C). Pub. L. 105–135, §201(a), substituted ''$3,500,000'' for ''$2,500,000''.

Subsec. (m)(3)(D)(i), (ii). Pub. L. 105–135, §201(b), added cls. (i) and (ii) and struck out former cls. (i) and (ii) which read as follows:

''(i) in the first year of the intermediary's participation in the demonstration program, at a level equal to not more than 15 percent of the outstanding balance of the notes receivable owed to the intermediary; and

''(ii) in each year of participation thereafter, at a level reflecting the intermediary's total losses as a result of participation in the demonstration program, as determined by the Administration on a case-by-case basis, but in no case shall the required level exceed 15 percent of the outstanding balance of the notes receivable owed to the intermediary under the program.''

Subsec. (m)(4)(E). Pub. L. 105–135, §201(d)(1), designated existing provisions as cl. (i), inserted heading, substituted ''25 percent'' for ''15 percent'', and added cl. (ii).

Subsec. (m)(4)(F). Pub. L. 105–135, §202(a)(2), added subpar. (F).

Subsec. (m)(5)(A). Pub. L. 105–135, §201(d)(2), struck out ''in each of the 5 years of the demonstration program established under this subsection,'' after ''requirements of subparagraph (B),'' and substituted ''annually'' for ''for terms of up to 5 years''.

Subsec. (m)(6)(E). Pub. L. 105–135, §202(a)(3), added subpar. (E).

Subsec. (m)(9). Pub. L. 105–135, §202(a)(4)(A), substituted ''Grants for management, marketing, technical assistance, and related services'' for ''Technical assistance for intermediaries'' in heading.

Subsec. (m)(9)(C). Pub. L. 105–135, §202(a)(4)(B), added subpar. (C).

Subsec. (m)(12). Pub. L. 105–135, §201(c)(4), substituted ''1998 through 2000'' for ''1995 through 1997''.

Subsec. (m)(13). Pub. L. 105–135, §202(a)(5), added par. (13).

1996—Subsec. (a)(2)(C)(ii)(II). Pub. L. 104–208, §103(a), amended subcl. (II) generally. Prior to amendment, subcl. (II) read as follows: ''authority to service and liquidate such loans.''

Subsec. (a)(2)(D). Pub. L. 104–208, §111, added subpar. (D).

Subsec. (a)(4). Pub. L. 104–208, §103(f), inserted par. (4) heading, designated existing text as subpar. (A) and inserted heading, and added subpar. (B).

Subsec. (a)(19)(C). Pub. L. 104–208, §103(b), added subpar. (C).

Subsec. (a)(25). Pub. L. 104–208, §103(c), added par. (25).

Subsec. (a)(26). Pub. L. 104–208, §103(d), added par. (26).

Subsec. (d). Pub. L. 104–208, §107(a), struck out ''(1)'' before ''The Administration'' and struck out par. (2) which read as follows: ''The Administration is authorized to hold seminars throughout the Nation to make potential applicants aware of the opportunities available under this subsection and related government energy programs, and to make grants to qualified organizations to provide training seminars for small business concerns regarding practical and easily implemented methods for design, manufacture, installation, and servicing of equipment and for providing services listed in paragraph (1) of this subsection, except that recipients of loans made pursuant to this subsection shall not subsequently be eligible for such grants.''

Subsec. (e). Pub. L. 104–208, §107(b), amended subsec. (e) generally, substituting ''(e) [RESERVED]'' for prior provisions of subsec. (e) which read as follows: ''The Administration also is empowered to make loans (either directly or in cooperation with banks or other lenders through agreements to participate on an immediate or deferred basis) to assist any firm to adjust to changed economic conditions resulting from increased competition from imported articles, but only if (1) an adjustment proposal of such firm has been certified by the Secretary of Commerce pursuant to the Trade Expansion Act of 1962, (2) the Secretary has referred such proposal to the Administration under that Act and the loan would provide part or all of the financial assistance necessary to carry out such proposal, and (3) the Secretary's certification is in force at the time the Administration makes the loan. With respect to loans made under this subsection the Administration shall apply the provisions of sections 314, 315, 316, 318, 319, and 320 of the Trade Expansion Act of 1962 as though such loans had been made under section 314 of that Act.''

Subsec. (f). Pub. L. 104–208, §107(c), amended subsec. (f) generally, substituting ''(f) [RESERVED]'' for prior provisions of subsec. (f) which read as follows: ''In the administration of the disaster loan program under subsection (b)(1) of this section, in the case of property loss or damage as a result of a disaster which is a 'major disaster' as defined in section 102(2) of the Disaster Relief and Emergency Assistance Act, the Small Business Administration, to the extent such loss or damage is not compensated for by insurance or otherwise, may lend to a privately owned college or university without regard to whether the required financial assistance is otherwise available from private sources, and may waive interest payments and defer principal payments on such a loan for the first three years of the term of the loan.''

Subsec. (*l*). Pub. L. 104–208, §107(c), amended subsec. (*l*) generally, substituting ''(*l*) [RESERVED]'' for prior provisions of subsec. (*l*) which consisted of 9 pars. authorizing loans to small business concerns for solar energy and energy conservation measures.

Subsec. (m)(7)(B). Pub. L. 104–208, §105, inserted at end ''If, however, at the beginning of the fourth quarter of a fiscal year the Administration determines that a portion of appropriated microloan funds are unlikely to be awarded during that year, the Administration may make additional funds available to a State in excess of 125 percent of the pro rata share of that State.''

1995—Subsec. (a)(2). Pub. L. 104–36, §2, amended par. (2) generally. Prior to amendment, par. (2) related to percentage levels in loan participation agreements.

Subsec. (a)(18). Pub. L. 104–36, §3(a), amended par. (18) generally. Prior to amendment, par. (18) read as follows: ''The Administration shall collect a guarantee fee equal to two percent of the amount of the deferred participation share of any loan under this subsection other than a loan repayable in one year or less. The fee shall be payable by the participating lending institution and may be charged to the borrower.''

Subsec. (a)(19)(B). Pub. L. 104–36, §3(b)(1), substituted ''shall develop'' for ''shall (i) develop'' and struck out at end '', and (ii) allow such lenders to retain one-half of the fee collected pursuant to subsection (a)(18) of this section on such loans. A participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless the amount in excess of $50,000 is an amount not approved under the provisions of this paragraph''.

Subsec. (a)(19)(C). Pub. L. 104–36, §3(b)(2), struck out subpar. (C) which read as follows: ''In order to encourage lending institutions and other entities making loans authorized under this subsection to provide loans to small business loan applicants located in rural areas, such lenders shall be permitted to retain one-half of the fee collected pursuant to paragraph (18) on loans of less than $75,000. A participating lender may not retain any fee pursuant to this subparagraph if the amount committed and outstanding to the applicant would exceed $75,000 unless the amount in excess of $75,000 is an amount not approved under the provisions of this subparagraph. This subparagraph shall cease to be effective on October 1, 1995.''

Subsec. (a)(23). Pub. L. 104–36, §4(a), added par. (23).

Subsec. (a)(24). Pub. L. 104–36, §5, added par. (24).

1994—Subsec. (a)(2)(B)(iv). Pub. L. 103–403, §211, amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''not less than 85 percent of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16).''

Subsec. (a)(3)(B). Pub. L. 103–403, §210, amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''if the total amount outstanding and committed (on a deferred basis) solely for the purposes provided in paragraph (16) to the borrower from the business loan and investment fund established by this chapter would exceed $1,000,000, such amount to be in addition to any financing solely for working capital, supplies, or revolving lines of credit for export purposes up to a maximum of $250,000; and''.

Subsec. (a)(14)(A). Pub. L. 103–403, §209, amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''The Administration under this subsection may provide extensions and revolving lines of credit for export purposes and financing to enable small business concerns, including small business export trading companies and small business export management companies, to develop foreign markets. No such extension or revolving line of credit may be made for a period or periods exceeding 3 years. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable.''

Subsec. (a)(21)(A). Pub. L. 103–403, §605(a), inserted ''on a guaranteed basis'' before ''under the authority''.

Subsec. (a)(21)(E). Pub. L. 103–403, §603, added subpar. (E).

Subsec. (m)(3)(C). Pub. L. 103–403, §206, substituted ''$2,500,000'' for ''$1,250,000''.

Subsec. (m)(4)(B). Pub. L. 103–403, §208(a)(1), (c), temporarily inserted ''except for a grant made to an intermediary that provides not less than 50 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area,'' after ''under subparagraph (A),''. See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(4)(C)(i). Pub. L. 103–403, § 208(a)(2), (c), temporarily added cl. (i) which read as follows: ''In addition to grants made under subparagraph (A), each intermediary shall be eligible to receive a grant equal to 5 percent of the total outstanding balance of loans made to the intermediary under this subsection if—

''(I) the intermediary provides not less than 25 percent of its loans to small business concerns located in or owned by one or more residents of an economically distressed area; or

''(II) the intermediary has a portfolio of loans made under this subsection that averages not more than $7,500 during the period of the intermediary's participation in the program.''

See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(4)(E). Pub. L. 103–403, § 207, added subpar. (E).

Subsec. (m)(7). Pub. L. 103–403, § 204, amended par. (7) generally, substituting present provisions for former provisions relating to program funding, which provided for: in subpar. (A), first year programs; in subpar. (B), expanded programs; and in subpar. (C), State limitations.

Subsec. (m)(8). Pub. L. 103–403, § 205, amended heading and text of par. (8) generally. Prior to amendment, text read as follows: ''In funding microloan programs, the Administration shall ensure that at least one-half of the programs funded under this subsection will provide microloans to small business concerns located in rural areas.''

Subsec. (m)(9)(B). Pub. L. 103–403, § 604, inserted ''and loan guarantees'' after ''for loans'' and ''and national and regional nonprofit organizations that have demonstrated experience in providing training support for microenterprise development and financing.'' after ''experienced microlending organizations''.

Subsec. (m)(11)(A)(v). Pub. L. 103–403, § 202, added cl. (v).

Subsec. (m)(11)(D). Pub. L. 103–403, § 208(b), (c), temporarily added subpar. (D) which read as follows: ''the term 'economically distressed area', as used in paragraph (4), means a county or equivalent division of local government of a State in which the small business concern is located, in which, according to the most recent data available from the Bureau of the Census, Department of Commerce, not less than 40 percent of residents have an annual income that is at or below the poverty level.''. See Effective and Termination Dates of 1994 Amendment note below.

Subsec. (m)(12). Pub. L. 103–403, § 201, added par. (12).

1993—Subsec. (a)(2). Pub. L. 103–81, § 5(a)(2)–(4), in concluding provisions, substituted ''less than the above specified percentums'' for ''less than 85 percent under subparagraph (B)'' and ''not less than 70 percent, unless a lesser percent is required by clause (B)(ii) or upon the'' for ''not less than 80 percent, except upon'' and inserted after third sentence ''The maximum interest rate for a loan guaranteed under the Preferred Lenders Program shall not exceed the maximum interest rate, as determined by the Administration, which is made applicable to other loan guarantees under subsection (a) of this section.''

Subsec. (a)(2)(B). Pub. L. 103–81, § 5(a)(1), struck out ''and'' at end of cl. (i), added cls. (ii) and (iii), and redesignated former cl. (ii) as (iv).

Subsec. (a)(22). Pub. L. 103–81, § 4, added par. (22).

Subsec. (m)(1)(B)(iii). Pub. L. 103–81, § 8(1), substituted ''$25,000'' for ''$15,000''.

Subsec. (m)(5)(A). Pub. L. 103–81, § 8(2), substituted ''25 grants for terms of up to 5 years'' for ''6 grants''.

Subsec. (m)(9)(B). Pub. L. 103–81, § 8(3), substituted ''7 percent'' for ''3 percent''.

1992—Subsec. (a)(4). Pub. L. 102–366, § 104, substituted ''Notwithstanding the provisions of the constitution of any State or the laws of any State limiting the rate or amount of interest which may be charged, taken, received, or reserved, the maximum legal rate of interest on any financing made on a deferred basis pursuant to this subsection'' for ''The rate of interest on financings made on a deferred basis shall be legal and reasonable but''.

Subsec. (a)(21). Pub. L. 102–366, § 211, added par. (21).

Subsec. (m)(1)(A)(i). Pub. L. 102–366, § 113(a)(1)(A), amended cl. (i) generally, substituting ''and business owners and other such individuals'' for '', business owners, and other individuals''.

Subsec. (m)(1)(A)(iii)(I). Pub. L. 102–366, § 113(a)(1)(B), inserted '', particularly loans in amounts averaging not more than $7,500,'' after ''small-scale loans''.

Subsec. (m)(3)(A). Pub. L. 102–366, § 113(a)(2), designated existing provisions as cl. (i) and inserted heading, redesignated cls. (i) to (viii) as subcls. (I) to (VIII), respectively, substituted ''economic, poverty, and unemployment'' for ''economic and unemployment'' in subcl. (III), amended subcl. (VIII) generally, and added cl. (ii). Prior to amendment, subcl. (VIII) read as follows: ''any plan to involve private sector lenders in assisting selected small business concerns.''

Subsec. (m)(3)(F). Pub. L. 102–366, § 113(a)(3), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''Loans made by the Administration under this subsection shall be for a term of 10 years and at an interest rate equal to the rate determined by the Secretary of the Treasury for obligations of the United States with a period of maturity of 5 years, adjusted to the nearest one-eighth of 1 percent.''

Subsec. (m)(4)(A). Pub. L. 102–366, § 113(a)(4)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''Except as otherwise provided in subparagraph (C) and subject to the requirements of subparagraph (B), each intermediary that receives a loan under subparagraph (B)(i) of paragraph (1) shall be eligible to receive a grant to provide marketing, management, and technical assistance to small business concerns that are borrowers under this subsection. In the first and second years of an intermediary's program participation, each intermediary meeting the requirement of subparagraph (B) may receive a grant of not more than 20 percent of the total outstanding balance of loans made to it under this subsection. In the third and subsequent years of an intermediary's program participation, each intermediary meeting the requirements of subparagraph (B) may receive a grant of not more than 10 percent of the total outstanding balance of loans made to it under this subsection.''

Pub. L. 102–366, § 113(a)(4)(A), substituted ''Except as otherwise provided in subparagraph (C) and subject to'' for ''Subject to''.

Subsec. (m)(4)(B). Pub. L. 102–366, § 113(a)(4)(C), substituted ''25 percent'' for ''one-half''.

Subsec. (m)(4)(C), (D). Pub. L. 102–366, § 113(a)(4)(D), added subpars. (C) and (D).

Subsec. (m)(5)(A). Pub. L. 102–366, § 113(a)(5), substituted ''6 grants'' for ''2 grants''.

Subsec. (m)(6)(C). Pub. L. 102–366, § 113(a)(6), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Notwithstanding any provision of the laws of any State or the constitution of any State pertaining to the rate or amount of interest that may be charged, taken, received or reserved on a loan, the maximum rate of interest to be charged on a microloan funded under this subsection shall be not more than 4 percentage points above the prime lending rate, as identified by the Administration and published in the Federal Register on a quarterly basis.''

Subsec. (m)(7)(A). Pub. L. 102–564, § 307(b)(1), inserted at end: ''If, at the end of fiscal year 1992, the Administration has funded less than 50 microloan programs under this subparagraph, the Administration may, in fiscal year 1993, fund a number of additional microloan programs equal to the difference between 50 and the number of microloan programs actually funded in fiscal year 1992.''

Pub. L. 102–366, § 113(a)(7)(A), substituted ''60 microloan programs'' for ''35 microloan programs''.

Subsec. (m)(7)(B). Pub. L. 102–564, § 307(b)(2), substituted ''In addition to any microloan programs authorized to be funded in fiscal year 1993 in accordance with subparagraph (A), in the second'' for ''In the second''.

Pub. L. 102–366, §113(a)(7)(B), substituted ''50 additional'' for ''25 additional''.

Subsec. (m)(7)(C)(i). Pub. L. 102–366, §113(a)(7)(C), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''be awarded more than 2 microloan programs in any year of the demonstration program;''.

Subsec. (m)(7)(C)(ii), (iii). Pub. L. 102–366, §113(a)(7)(D), (E), substituted ''$1,500,000'' for ''$1,000,000'' in cl. (ii) and ''$2,500,000'' for ''$1,500,000'' in cl. (iii).

Subsec. (m)(9), (10). Pub. L. 102–366, §113(a)(8), (9), added par. (9) and redesignated former par. (9) as (10). Former par. (10) redesignated (11).

Subsec. (m)(11). Pub. L. 102–564, §307(c), inserted ''private,'' before ''nonprofit'' in subpar. (A)(ii).

Pub. L. 102–366, §113(a)(8), (10), redesignated par. (10) as (11) and amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''the term 'intermediary' means a private, nonprofit entity or a nonprofit community development corporation that seeks to borrow or has borrowed funds from the Small Business Administration to make microloans to small business concerns under this subsection;''.

1991—Subsec. (a)(18). Pub. L. 102–140, §609(b), struck out ''or a loan under paragraph (13)'' after ''one year or less''.

Subsec. (a)(19)(B). Pub. L. 102–191 struck out ''during fiscal years 1989, 1990, and 1991,'' after ''small business loan applicants,''.

Subsec. (m). Pub. L. 102–140, §609(h), added subsec. (m).

1990—Subsec. (a)(14)(A). Pub. L. 101–574, §202, struck out ''pre-export'' before ''financing'' and substituted ''3 years'' for ''18 months''.

Subsec. (a)(16)(A). Pub. L. 101–574, §245, struck out at end ''The lender shall agree to sell the loan in the secondary market as authorized in sections 634(f) and 634(g) of this title within 180 days of the date of disbursement.''

Subsec. (a)(19)(C). Pub. L. 101–574, §307, added subpar. (C).

Subsec. (j)(3)(A). Pub. L. 101–574, §242(1), struck out subpar. (A), which was previously struck out by Pub. L. 100–656, §505(h). See 1988 Amendment note below.

Subsec. (j)(3)(B). Pub. L. 101–574, §242(1), struck out subpar. (B) which read as follows: ''The General Accounting Office shall evaluate the activities taken by the Administration to achieve the purpose of this paragraph and evaluate the success of these activities in achieving the purposes of this paragraph. The General Accounting Office shall report to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General, on the findings of this evaluation and shall make recommendations on actions needed to improve the Administration's performance pursuant to this paragraph.''

Subsec. (j)(8). Pub. L. 101–574, §242(2), struck out par. (8) which read as follows: ''The General Accounting Office shall provide for an independent and continuing evaluation of programs under subsections (i) and (j) of this section and section 637(a) of this title, including full information on, and analysis of, the character and impact of managerial assistance provided, the location, income characteristics, and extent to which private resources and skills have been involved in these programs. Such evaluation together with any recommendations deemed advisable by the Comptroller General shall be reported to the Congress by January 1, 1981, and at any time thereafter at the discretion of the Comptroller General.''

Subsec. (j)(10)(J)(ii). Pub. L. 101–574, §204(a), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''Except as provided under section 602 of the Business Opportunity Development Reform Act of 1988, no award shall be made pursuant to section 637(a) of this title to other than a small business concern.''

Subsec. (j)(13)(D)(iii). Pub. L. 101–574, §206, substituted ''October 1, 1994'' for ''October 1, 1992''.

1989—Subsec. (a)(2). Pub. L. 101–162, title V, (1), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''In agreements to participate in loans on a deferred basis under this subsection, such participation by the Administration, except as provided in paragraph (6), shall be:

''(A) not less than 90 per centum of the balance of the financing outstanding at the time of disbursement if such financing does not exceed $155,000; and

''(B) subject to the limitation in paragraph (3)—

''(i) not less than 70 per centum nor more than 85 per centum of the financing outstanding at the time of disbursement if such financing exceeds $155,000 but is less than $714,285,

''(ii) less than 70 per centum of the financing outstanding at the time of disbursement if such financing exceeds $714,285;

''(iii) not less than 85 per centum of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16) and is less than $1,176,470; and

''(iv) less than 85 per centum of the financing outstanding at the time of disbursement if such financing is a loan under paragraph (16) and exceeds $1,176,470;

*Provided*, That the Administration shall not use the per centum of guarantee requested as a criterion to establish priorities in approving guarantee requests nor shall the Administration reduce the per centum guaranteed to less than 85 per centum pursuant to subparagraph (B) other than by a determination made on each application: *Provided*, *further*, That the Administration may reduce its participation below the per centums stated in this paragraph if the lender requests the reduction under the preferred lenders program or any successor thereto, but any such reduction shall not exceed five points. As used in this sentence the term 'preferred lenders program' means a program under which, pursuant to a written agreement between the lender and the Administration, the lender has been delegated (1) complete authority to make and close loans with a guarantee from the Administration without obtaining the prior specific approval of the Administration, and (2) authority to service and liquidate such loans.''

Subsec. (a)(19). Pub. L. 101–162, title V, (2), amended par. (19) generally. Prior to amendment, par. (19) read as follows: ''During fiscal years 1989, 1990, and 1991, in addition to the preferred lenders program authorized by the proviso in section 634(b)(7) of this title, the Administration is authorized to establish a certified loan program for lenders who establish their knowledge of Administration laws and regulations concerning the loan guarantees program and their proficiency in program requirements. In order to encourage certified lenders and preferred lenders to provide loans of $50,000 or less in guarantees to eligible small business loan applicants, the Administration (A) shall develop and shall allow participating lenders in the certified loan program and in the preferred loan program to solely utilize a uniform and simplified loan form for such loans and (B) shall allow such lenders to retain one-half of the fee collected pursuant to subsection (a)(16) of this section on such loans: *Provided*, That a participating lender may not retain any fee pursuant to this paragraph if the amount committed and outstanding to the applicant would exceed $50,000 unless such excess amount was not approved under the provisions of this paragraph. The designation of a lender as a certified lender shall be suspended or revoked at any time that the Administration determines that the lender is not adhering to its rules and regulations or if the Administration determines that the loss experience of the lender is excessive as compared to other lenders: *Provided further*, That any suspension or revocation of the designation shall not affect any outstanding guarantee: And, *provided further*, That the Administration may not reduce the per centum of guarantee as a criterion of eligibility for participation in this program, except as otherwise provided by law.''

Subsec. (a)(20)(C)(iv). Pub. L. 101–37, §9, inserted ''is'' before ''amortized''.

Subsec. (j)(10)(A)(i). Pub. L. 101–37, §5(a), substituted ''which set forth'' for ''which sets forth''.

Subsec. (j)(10)(D)(i). Pub. L. 101–37, § 5(b)(1), substituted ''Business Opportunity Specialist'' for ''business opportunity specialist''.

Subsec. (j)(10)(D)(ii)(II). Pub. L. 101–37, § 5(b)(2), substituted ''the small business concern'' for ''small business concerns''.

Subsec. (j)(10)(D)(iii). Pub. L. 101–37, § 5(b)(3), inserted ''relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title'' after ''subparagraph (I)''.

Subsec. (j)(10)(D)(iv). Pub. L. 101–37, § 5(b)(4), substituted ''contract awards'' for ''contact awards''.

Subsec. (j)(10)(D)(iv)(I). Pub. L. 101–37, § 5(b)(5), inserted ''relating to attaining business activity from sources other than contracts awarded pursuant to section 637(a) of this title'' after ''subparagraph (I)''.

Subsec. (j)(10)(E)(ii). Pub. L. 101–37, § 7(a)(1), substituted ''completes the period of Program participation as prescribed by paragraph (15)'' for ''participates in the Program for a period in excess of the time limits prescribed by paragraph (15)''.

Subsec. (j)(10)(F). Pub. L. 101–37, § 7(a)(2), struck out subpar. (F) appearing first, which read as follows: ''For the purposes of this subsection and section 637(a) of this title, the terms 'terminated' or 'termination' shall mean the total denial''.

Pub. L. 101–37, § 7(a)(3), in subpar. (F) appearing second, inserted first sentence and struck out former first sentence which read as follows: ''For the purposes of this chapter, this subsection and section 637(a) of this title, the terms 'terminated' or 'termination' shall mean the total denial or suspension of assistance provided pursuant to this paragraph or section 637(a) of this title prior to the graduation of the participating small business concern pursuant to subparagraph (H) or the expiration of the maximum program participation in terms prescribed by paragraph (15).''

Subsec. (j)(10)(I). Pub. L. 101–37, § 10(b), designated as subpar. (I) the undesignated subpar. which followed subpar. (H).

Pub. L. 101–37, § 10(a), made technical correction to directory language of Pub. L. 100–656, § 303(a), see 1988 Amendment note below.

Subsec. (j)(10)(J)(i). Pub. L. 101–37, § 6(a), substituted ''suspended'' for ''suspended or terminated''.

Subsec. (j)(11)(B). Pub. L. 101–37, § 4(1), added subpar. (B) and struck out former subpar. (B) which read as follows: ''Except as provided in section 602(d) of the Business Opportunity Development Reform Act of 1988, any individual upon whom eligibility is based pursuant to section 637(a)(4) of this title, shall be permitted to assert such eligibility for only one small business concern. Notwithstanding the provisions of the preceding sentence, no individual who was determined pursuant to section 637(a) of this title to be socially and economically disadvantaged before June 1, 1989, shall be permitted to assert such disadvantage with respect to any other concern making application for certification after June 1, 1989.''

Subsec. (j)(11)(E). Pub. L. 101–37, § 4(2), (3), substituted ''Office of Minority Small Business'' for ''Office of the Associate Administrator for Minority Small Business'' and ''the Associate Administrator for Minority Small Business and Capital Ownership Development'' for ''such Associate Administrator''.

Subsec. (j)(11)(F)(v). Pub. L. 101–37, § 4(4), substituted ''to the Associate Administrator'' for ''with the Associate Administrator''.

Subsec. (j)(11)(F)(vi). Pub. L. 101–37, § 4(5), added cl. (vi) and struck out former cl. (vi) which read as follows: ''decide protests from applicants that have been denied program admission;''.

Subsec. (j)(11)(F)(viii). Pub. L. 101–37, § 4(6), substituted ''subparagraph (I)'' for ''subparagraph (H)''.

Subsec. (j)(11)(G)(ii). Pub. L. 101–37, § 4(7), substituted ''Participants'' for ''participants''.

Subsec. (j)(11)(H), (I). Pub. L. 101–37, § 4(9), added subpar. (H) and redesignated former subpar. (H) as (I).

Subsec. (j)(12)(A). Pub. L. 101–37, § 8(a)(1), substituted ''developmental'' for ''development''.

Subsec. (j)(12)(B). Pub. L. 101–37, § 8(a)(2), inserted ''in its effort'' after ''to assist the concern''.

Subsec. (j)(13)(E). Pub. L. 101–37, § 8(b), inserted second sentence and struck out former second sentence which read as follows: ''Such financial assistance may be made without regard to section 647(a) of this title, shall be made by way of reimbursement to the training provider, and shall have such adjustments as may be necessary to provide for overpayments or underpayments.''

1988—Subsec. (a)(2). Pub. L. 100–590, § 103, inserted '', but any such reduction shall not exceed five points'' after ''any successor thereto'' in second proviso.

Subsec. (a)(2)(B)(iii), (iv). Pub. L. 100–418, § 8007(a)(1), added cls. (iii) and (iv).

Subsec. (a)(3). Pub. L. 100–418, § 8007(a)(2), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''No loan under this subsection shall be made if the total amount outstanding and committed (by participation or otherwise) to the borrower from the business loan and investment fund established by this chapter would exceed $500,000: *Provided*, That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000.''

Subsec. (a)(12). Pub. L. 100–590, § 111(c), designated existing provisions as subpar. (A) and added subpar. (b)[(B)].

Subsec. (a)(14). Pub. L. 100–418, § 8005, amended par. (14) generally. Prior to amendment, par. (14) read as follows: ''The Administration under this subsection may provide extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing: *Provided, however*, That no such extension or revolving line of credit may be made for a period or periods exceeding eighteen months. A bank or participating lending institution may establish the rate of interest on extensions and revolving lines of credit as may be legal and reasonable.''

Subsec. (a)(16) to (18). Pub. L. 100–418, § 8007(a)(3), (4), added pars. (16) and (17) and redesignated former par. (16) as (18).

Subsec. (a)(19). Pub. L. 100–533 and Pub. L. 100–590, § 102(a), made identical amendments adding par. (19).

Subsec. (a)(20). Pub. L. 100–656, § 302, added par. (20).

Subsec. (b)(1)(A). Pub. L. 100–590, §§ 119(a), 121, substituted ''natural or other disasters'' for ''floods, riots or civil disorders, or other catastrophes'' and inserted proviso that Administration may increase loan up to additional 20 per centum to protect damaged or destroyed property from possible future disasters.

Subsec. (b)(2)(A). Pub. L. 100–707, § 109(f)(1), substituted ''the Disaster Relief and Emergency Assistance Act'' for ''the Act entitled 'An Act to authorize Federal assistance to States and local governments in major disasters, and for other purposes', approved September 30, 1950, as amended (42 U.S.C. 1855–1855g)''.

Subsec. (b)(E). Pub. L. 100–707, § 109(f)(2), substituted ''section 312(a) of the Disaster Relief and Emergency Assistance Act'' for ''subsection (b) of section 315 of Public Law 93–288 (42 U.S.C. 5155)''.

Subsec. (c)(5)(C). Pub. L. 100–590, § 120(b), substituted ''business or other concern, including agricultural cooperatives,'' for ''business concern''.

Subsec. (c)(6). Pub. L. 100–590, § 122, substituted ''refinancing: *Provided further*, That the Administration shall not require collateral for loans of $10,000 or less which are made under paragraph (1) of subsection (b) of this section''. for ''refinancing''.

Subsec. (c)(7). Pub. L. 100–590, § 120(a), added par. (7).

Subsec. (f). Pub. L. 100–707, § 109(f)(3), substituted ''section 102(2) of the Disaster Relief and Emergency Assistance Act'' for ''section 2(a) of the Act of September 30, 1950 (42 U.S.C. 1855a(a))''.

Subsec. (j)(3)(A). Pub. L. 100–656, § 505(h), struck out subpar. (A) which read as follows: ''An advisory committee composed of five high-level officers from five United States businesses and five representatives of

minority small businesses shall be created to facilitate the achievement of the purposes of this paragraph. The members of the advisory committee shall be appointed by the President. The chairman of the advisory committee, who shall be designated by the President shall report annually to the President and to the Congress on the activities of the advisory committee.''

Subsec. (j)(10)(A)(i). Pub. L. 100–656, §205(a), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: ''assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 637(a)(6) of this title, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided*, That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate: *Provided further*, That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 637(a)(9) of this title;''.

Subsec. (j)(10)(C). Pub. L. 100–656, §205(b)(1), (2), redesignated subpar. (D) as (C) and struck out former subpar. (C) which read as follows: ''No small business concern shall receive a contract pursuant to section 637(a) of this title unless—

''(i) the business plan required pursuant to paragraph (10)(A)(i) is approved by the Administration; and

''(ii) the program is able to provide such concern with, but not limited to, such management, technical and financial services as may be necessary to achieve the targets, objectives, and goals of such business.''

Subsec. (j)(10)(D). Pub. L. 100–656, §205(b)(2), (3), added subpar. (D). Former subpar. (D) redesignated (C).

Pub. L. 100–656, §203, added subpar. (D).

Subsec. (j)(10)(E) to (H). Pub. L. 100–656, §208, added subpars. (E) to (H).

Subsec. (j)(10)[(I)]. Pub. L. 100–656, §303(a), as amended by Pub. L. 101–37, §10(a), added new subpar. without subpar. designation, but which probably was intended to be subpar. (I). See 1989 Amendment note above.

Subsec. (j)(10)(J). Pub. L. 100–656, §206, added subpar. (J).

Subsec. (j)(11). Pub. L. 100–656, §201(a), designated existing provisions as subpar. (A) and added subpars. (B) to (H).

Subsec. (j)(12). Pub. L. 100–656, §301(a), added par. (12).

Subsec. (j)(13). Pub. L. 100–656, §301(b), added par. (13).

Subsec. (j)(14). Pub. L. 100–656, §301(c), added par. (14).

Subsec. (j)(15). Pub. L. 100–656, §202, added par. (15).

Subsec. (j)(16). Pub. L. 100–656, §408, added par. (16).

1986—Subsec. (a)(2). Pub. L. 99–272, §18013, in subpar. (A) substituted ''$155,000'' for ''$100,000'', in subpar. (B)(i) substituted ''$155,000'' for ''$100,000'' and ''85'' for ''90'', in proviso following subpar. (B) substituted ''85'' for ''90'', and inserted a second proviso relating to reduction by the Administration of its participation below the per centum stated in this paragraph and defining ''preferred lenders program''.

Subsec. (a)(15)(B)(i). 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.

Subsec. (a)(16). Pub. L. 99–272, §18007, added par. (16).

Subsec. (b). Pub. L. 99–272, §18006(a)(1), in provision preceding par. (1) substituted ''Except as to agricultural enterprises as defined in section 647(b)(1) of this title, the,'' for ''The'', struck out par. (3) which authorized loans, each one not to exceed $500,000, to any small business concern to effect continuation of, additions to, alterations in, or reestablishment in the same or a new location of its plant, facilities, or methods or operation caused by direct action of the Federal Government or as a consequence of Federal Government action provided that the applicant was unable to obtain credit elsewhere, and struck out par. (4) which authorized disaster loans, each one not to exceed $100,000, to any small business concern located in an area of economic dislocation that was the result of the drastic fluctuation in the value of the currency of a country contiguous to the United States and adjustments in the regulation of its monetary system if such concern was unable to obtain credit elsewhere.

Subsec. (c)(4). Pub. L. 99–272, §18006(a)(2), struck out provision following subpar. (D) which provided that loans, subject to reductions under subpars. (A) and (B) of par. (1), be in amounts equal to 100 percent of loss if the applicant was a homeowner and 85 percent if the applicant was a business or otherwise, the interest rate for loans under pars. (1) and (2) be the rate of interest in effect on the date the disaster commenced, and the Administrator, in his discretion, waive the $500,000 limitation on the total amount outstanding and committed to the borrower under this subsection if the applicant constituted a major source of employment in an area suffering a disaster.

1984—Subsec. (b)(2). Pub. L. 98–270, §311(1), (3), substituted in provisions preceding subpar. (A) ''small business concern or small agricultural cooperative'' for ''small business concern'' and ''the concern or the cooperative'' for ''the concern''.

Subsec. (b)(2)(D). Pub. L. 98–270, §311(2), substituted ''small business concerns or small agricultural cooperatives'' for ''small business concerns''.

Subsec. (b)(3). Pub. L. 98–270, §308, inserted ''continuation of,'' after ''in effecting'' and inserted provision directing that, for purposes of this paragraph, the impact of the 1983 Payment-in-Kind Land Diversion program, or any successor Payment-in-Kind program with a similar impact on the small business community, be deemed to be a consequence of Federal Government action.

Subsec. (b)(4). Pub. L. 98–270, §304(2), added par. (4).

Subsec. (c). Pub. L. 98–270, §301, added undesignated par. following par. (6).

Subsec. (c)(5). Pub. L. 98–270, §301, added par. (5).

Subsec. (c)(6). Pub. L. 98–270, §301, added par. (6).

Pub. L. 98–270, §309, inserted provision directing that employees of concerns sharing common business premises be aggregated in determining ''major source of employment'' status for nonprofit applicants owning such premises.

Subsec. (d)(1). Pub. L. 98–395 substituted provisions stating that the Administration shall not fund any Small Business Development Center except as authorized for former provisions which prohibited such funding only after October 1, 1980.

1981—Subsec. (a). Pub. L. 97–35, §1902, substituted provisions empowering the Administration to the extent and in such amounts as provided in advance in appropriation acts, for plant acquisition, construction, conversion, or expansion, including the acquisition of land, material, supplies, equipment, and working capital, and to make loans to qualified small business concerns including those owned by qualified Indian tribes, for purposes of this chapter, and that financing may be made either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred basis for provisions empowering the Administration to make loans to enable small business concerns and such concerns wholly owned by Indian tribes to finance plant construction, conversion, or expansion, including the acquisition of land, or to finance residential or commercial construction or rehabilitation, for sale, with a proviso that such loans shall not be used primarily for the acquisition of land, or to finance the acquisition of equipment, facilities, machinery, supplies, or materials, or to supply such concerns with working capital to be used in the manufacture of articles, equipment, supplies, or materials for war, defense, or civilian production or as may be necessary to insure a well-balanced national economy, and that such loans may be made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis.

Subsec. (a)(6)(C). Pub. L. 97–35, § 1910, repealed subpar. (C) which read as follows: ''the Administration shall not decline to participate in a loan on a deferred basis under this subsection solely because such loan will be used to refinance all or any part of the existing indebtedness of a small business concern, unless the Administration determines that—

''(i) the holder of such existing indebtedness is in a position likely to sustain a loss if such refinancing is not provided, and

''(ii) if the Administration provides such refinancing through an agreement to participate on a deferred basis, it will be in a position likely to sustain part or all of any loss which would have otherwise been sustained by the holder of the original indebtedness: *Provided further*, That the Administration may decline to approve such refinancing if it determines that the loan will not benefit the small business concern.''

Subsec. (a)(8). Pub. L. 97–35, § 1910, repealed par. (8) which read as follows: ''(8)(A) Any loan made under the authority of this subsection by the Administration in cooperation with a bank or other lending institution through an agreement to participate on a deferred basis, may, upon the concurrence of the Administration, borrower and such bank or institution, have the term of such loan extended or such loan refinanced with an extension of its term: *Provided*, That the aggregate term of such extended or refinanced loan does not exceed the term permitted pursuant to paragraph (5): *And provided further*, That such extended loans, or refinancings shall be repaid in equal installments of principal and interest.

''(B) An additional service fee not exceeding 1 per centum of the outstanding amount of the principal may be paid by the borrower to the lender in consideration for such lender extending the term or refinancing of such borrower's indebtedness if such extension or refinancing results in the term of such indebtedness exceeding ten years.

''(C) The authority provided in this paragraph shall not be construed to otherwise limit the authority of the Administration to set terms and conditions of the loan.''

Subsec. (b)(1). Pub. L. 97–35, § 1911, revised provisions to specifically authorize loans only to repair, rehabilitate, or replace property, real or personal, damaged or destroyed, and is not compensated for by insurance or otherwise, and to refinance any mortgage or other lien against a totally destroyed or substantially damaged home or business concern upon finding that the applicant is not able to obtain credit elsewhere, that such property is to be repaired, rehabilitated, or replaced, that the amount refinanced shall not exceed the loss, and that the amount shall be reduced to the extent such mortgage or lien is satisfied by insurance or otherwise.

Subsec. (b)(2). Pub. L. 97–35, § 1911, revised provisions to continue to authorize loans to business concerns which the Administration determines to have suffered substantial economic injury as a result of a physical disaster as declared under certain pertinent triggering legislation.

Subsec. (b)(3) to (9). Pub. L. 97–35, § 1913(a), designated existing provisions of par. (5) as (3) with minor changes, and struck out pars. (3), (4), and (6) to (9) relating to non-physical disaster loans.

Subsec. (c)(3). Pub. L. 97–35, § 1914, substituted ''effective date of this Act'' for ''to October 1, 1983''.

Subsec. (c)(4). Pub. L. 97–35, § 1912, added par. (4).

Subsec. (g). Pub. L. 97–35, § 1913(c), repealed subsec. (g) which related to loans to small business concerns for water pollution control facilities.

1980—Subsec. (a). Pub. L. 96–481, § 112, inserted provisions preceding par. (1) empowering the Administration to the extent and in such amounts as are provided in appropriation acts to make or effect either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate or deferred basis extensions and revolving lines of credit for export purposes to enable small business concerns to develop foreign markets and for preexport financing, with proviso limiting the extension of credit or revolving line of credit to a period of eighteen months.

Subsec. (a)(8). Pub. L. 96–302, § 505, added par. (8).

Subsec. (b). Pub. L. 96–302, § 124, which directed that cl. (E), respecting duplication of disaster benefits, be added at end of subsec. (b), was executed by inserting cl. (E) following cl. (D) in next to last par. of subsec. (b) as the probable intent of Congress.

Subsec. (b)(4). Pub. L. 96–302, § 123, substituted ''other causes'' for ''undetermined causes'' and made the small business concern ineligible for loan assistance when the concern intentionally adulterates its product in attempting to establish eligibility under the loan assistance program.

Subsec. (b)(8). Pub. L. 96–302, § 122, authorized loans to assist small business concern affected by a shortage of coal or other energy-producing resource caused by a strike, boycott, or embargo, unless the strike, boycott, or embargo is directly against the small business concern.

Subsec. (c)(3). Pub. L. 96–302, § 119(a), (b), added subpar. (C) and extended disaster loans to disasters occurring prior to Oct. 1, 1983, instead of Oct. 1, 1982.

Subsec. (d)(1). Pub. L. 96–302, § 203, substituted provisions respecting: funding of small business development centers under section 648 of this title on and after Oct. 1, 1980; operation of such centers funded prior to Oct. 1, 1979; and prescribing $300,000 limitation for fiscal year 1980, for such centers funded in fiscal year 1979, for provisions respecting grants for studies research, and counseling concerning the managing, financing, and operation of small-business enterprises; study and research recommendation; and conditions, now covered in section 648(a) of this title.

Subsec. (j)(10). Pub. L. 96–481, § 104, in opening paragraph substituted provision that the program and all other services and activities authorized under this subsection and section 637(a) of this title shall be managed by the Associate Administrator for Minority Small Business and Capital Ownership Development under the Supervision of, and responsible to the Administrator, for provision that the management of the program shall be vested in the Associate Administrator for Minority Small Business and Capital Ownership Development who shall also manage all other services and activities authorized under this subsection and section 637(a) of this title.

Subsec. (j)(10)(A)(i). Pub. L. 96–481, § 106(a), substituted ''targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 637(a)(6) of this title, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided*, That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate; *Provided further*, That no determination made under this paragraph shall be considered a denial of participation for the purposes of section 637(a)(9) of this title'' for ''targets, objectives and goals''.

Subsec. (j)(10)(C). Pub. L. 96–481, § 107, in the conditions required to receive a contract by a small business concern, substituted provisions that the business plan be approved by the Administration and that the program be able to provide the concern with management, technical and financial services necessary to achieve the targets, objectives and goals of such business, for provision that the program be able to provide the concern with management, technical and financial services as may be necessary to promote the competitive viability of the concern within a reasonable period of time.

1979—Subsec. (b) following par. (9). Pub. L. 96–38 inserted '', except as provided in subsection (c) of this section,'' after ''the interest rate on the Administration's share of any loan made under this subsection'' in first unnumbered paragraph.

Subsec. (c)(3). Pub. L. 96–38 added par. (3).

1978—Subsec. (a). Pub. L. 95–507, §231, inserted provision including small-business concerns totally owned and controlled by Indian tribes within the scope of this section.

Subsec. (d). Pub. L. 95–315, §3, designated existing provisions as par. (1) and added par. (2).

Subsec. (j). Pub. L. 95–507, §204, included individuals and enterprises eligible for assistance under par. (10) of this subsection and section 637(a) of this title among those eligible for assistance under this section, provided for the establishment of the small business and capital ownership development program, and provided for the coordination of certain Federal policies under this section by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (k). Pub. L. 95–507, §205, inserted reference to section 637(a).

Subsec. (k)(4). Pub. L. 95–510 substituted ''the daily equivalent of the highest rate payable under section 5332 of title 5'' for ''$100 per diem''.

Subsec. (*l*). Pub. L. 95–315, §2, added subsec. (*l*).

1977—Subsec. (a). Pub. L. 95–89, §301, authorized loans to finance residential or commercial construction or rehabilitation for sale, subject to restriction that such loans be not used primarily for the acquisition of land.

Subsec. (a)(8). Pub. L. 95–89, §101(d), repealed par. (8) which required the Administrator to make direct loans under subsec. (a) in an aggregate amount of not less than $400,000,000 during fiscal year ending June 30, 1975.

Subsec. (b). Pub. L. 95–89, §405, inserted following par. (9) provisions respecting interest rate on loans to repair or replace primary residence and/or replace or repair damaged or destroyed personal property, including installation of insulation in connection with any disaster occurring on or after April 1, 1977, and transmission of a report to congressional committees respecting the activities under the provisions and the encouragement of such insulation installations.

Subsec. (b)(2)(C) to (E). Pub. L. 95–89, §403, added subpars. (C) to (E).

Subsec. (b)(3). Pub. L. 95–89, §402, substituted ''program or project constructed by or with funds provided in whole or in part by the Federal Government or by a program or project by a State or local government or public service entity, providing such government or public service entity has the authority to exercise the right of eminent domain on such program or project'' for ''federally aided urban renewal program or a highway project or any other construction constructed by or with funds provided in whole or in part by the Federal Government''.

Subsec. (b)(5). Pub. L. 95–89, §302, inserted ''heretofore or hereafter enacted'' after ''any Federal law''.

Subsec. (b)(9). Pub. L. 95–89, §404, added par. (9).

Subsec. (g)(4). Pub. L. 95–89, §101(e), repealed par. (4) which authorized appropriation of not to exceed $800,000,000 to the disaster fund solely for purpose of carrying out subsec. (g) loans to small business concerns for water pollution control facilities.

1976—Subsec. (a)(1). Pub. L. 94–305, §112(c), inserted reference to non-Federal sources.

Subsec. (a)(4)(A). Pub. L. 94–305, §111, substituted ''$500,000: *Provided*, That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000'' for ''$350,000''.

Subsec. (a)(4)(C). Pub. L. 94–305, §108(b), substituted provision relating to a twenty year maturity period for any portion of loan made for the purpose of acquiring real property or constructing facilities for provision relating to a ten year maturity for portion of loan made for purpose of constructing facilities.

Subsec. (b). Pub. L. 94–305, §114, in provisions following par. (8), substituted provisions requiring interest rate on Administration's share of any loan made under this subsection not to exceed the average annual interest rate on all interest-bearing obligations of the United States then forming a part of the public debt for provisions requiring interest rate on Administration's share of any loan made under this subsection not to exceed 3 per centum per annum except for loans made under pars. (3), (5), (6), (7), or (8) in which the interest will not exceed either 2¾ per centum per annum or the average annual interest rate of all interest-bearing obligations of the United States then forming a part of the public debt.

Subsec. (b)(4). Pub. L. 94–305, §112(d), struck out proviso that loans under subsec. (b)(4) of this section include loans to persons who are engaged in business of raising livestock, and who suffer substantial injury as a result of animal disease.

Subsec. (i)(1), (3). Pub. L. 94–305, §109, substituted ''$100,000'' for ''$50,000''.

1974—Subsec. (a)(4)(B). Pub. L. 93–386, §8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not more than 5½ per centum per annum.

Subsec. (a)(5)(B). Pub. L. 93–386, §8, substituted provisions for determining the rate of interest for the Administration's share of any loan for provisions setting forth the rate of interest for the Administration's share of any loan as not less than 3 nor more than 5 per centum per annum.

Subsec. (a)(8). Pub. L. 93–386, §12, added par. (8).

Subsec. (b)(4). Pub. L. 93–237, §5, inserted proviso that loans under this paragraph include loans to persons who are engaged in the business of raising livestock and who suffer substantial economic injury as a result of animal disease.

Subsec. (b)(5) to (7). Pub. L. 93–237, §§2(a), (b), 6, consolidated into a single par. (5) the authority of the Small Business Administration contained in former par. (5) to make loans to small business concerns to meet the requirements of the Federal Coal Mine Health and Safety Act of 1969, the Egg Products Inspection Act, the Wholesome Poultry Products Act, and the Wholesome Meat Act, and former par. (6) to make loans to small business concerns to meet the requirements of the Occupational Safety and Health Act of 1970, expanded such authority to finance structural, operational, or other changes required in order to meet standards imposed by Federal laws, or by State laws enacted in conformity with Federal laws, redesignated former par. (7) as par. (6), and added par. (7).

Subsec. (b)(8). Pub. L. 93–386, §9(a), added par. (8).

Subsec. (b). Pub. L. 93–386, §9(b), substituted ''paragraph (3), (5), (6), (7), or (8)'' for ''paragraph (3), (5), (6), or (7)'' in first par. following the numbered pars.

Subsecs. (g), (h). Pub. L. 93–237, §3(a), redesignated subsec. (g), relating to loans to handicapped persons and organizations for handicapped, as (h).

Subsec. (h)(2). Pub. L. 93–386, §3(2), inserted ''The Administration's share of'' before ''any loan''.

Subsecs. (i) to (k). Pub. L. 93–386, §2(a)(4), added subsecs. (i) to (k).

1972—Subsec. (b). Pub. L. 92–385 added par. (7), and in text following the numbered paragraphs, inserted provisions relating to the administration of the disaster loan program in relation to disasters occurring between January 1, 1971, and July 1, 1973.

Subsec. (g). Pub. L. 92–595 added subsec. (g) relating to loans to handicapped persons and organizations for handicapped.

Pub. L. 92–500 added subsec. (g) relating to loans to small business concerns for water pollution control facilities.

1970—Subsec. (b). Pub. L. 91–597 added par. (5) relating to loans for additions or alterations required under the Egg Products Inspection Act, etc., and inserted reference to such par. (5).

Pub. L. 91–596 added par. (6) and inserted reference to par. (6) after reference to par. (5).

1969—Subsec. (b). Pub. L. 91–173 added par. (5), and inserted reference to par. (5) after reference to par. (3).

1968—Subsec. (b)(1). Pub. L. 90–448 empowered the Administration to make loans because of riots or civil disorders.

Subsec. (b)(3). Pub. L. 90–495 added continuing in business at its existing location, purchasing a business, and establishing a new business to the list of purposes for which loans may be made, and extended the causes of substantial economic injury of the concern involved to include its location in, adjacent to, or near a federally aided urban renewal program, highway project, or other construction project using federal funds.

1967—Subsec. (a)(4). Pub. L. 90–104, § 103, extended maturity date for construction loans from ten to fifteen years.

Subsec. (f). Pub. L. 90–104, § 104, redesignated subsec. (e), added by Pub. L. 89–769, as (f).

1966—Subsec. (e). Pub. L. 89–409 added subsec. (e).

Pub. L. 89–769 added subsec. (e) which provided for assistance to privately owned higher education in major disaster areas and repayment.

1965—Subsec. (b). Pub. L. 89–59, § 1(a), increased the maturity of disaster loans from twenty to thirty years, and authorized suspension of principal and interest payments and extension of date of maturity for five year period.

Subsec. (c). Pub. L. 89–59, § 1(b), designated existing provisions as par. (1) and added par. (2).

1964—Subsecs. (b)(2), (4). Pub. L. 88–264 extended provisions of par. (2) to any small business affected by disasters other than drought or excessive rainfall and added par. (4) for disaster loans to any such business suffering economic injuries through natural or undetermined causes.

Subsec. (b)(3). Pub. L. 88–560 provided that the purposes of a loan under this paragraph may include the purchase or construction of other premises whether or not the borrower owned the premises from which it was displaced.

1961—Subsec. (b). Pub. L. 87–70 added par. (3), and inserted provisions limiting the interest rate in the case of loans made pursuant to par. (3) to not more than the higher of (A) 2¾ per centum per annum, or (B) the average annual interest rate on all interest-bearing obligations forming a part of the public debt as computed at the end of the fiscal year next preceding the date of the loan and adjusted to the nearest one-eighth of 1 per centum, plus one-quarter of 1 per centum per annum.

Subsec. (d). Pub. L. 87–305 empowered the Administration to make grants to any corporation formed by two or more eligible entities described in the text, authorized it to recommend to grant applicants particular studies or research, eliminated the limitation of one grant to a State, and conditioned grants to the procurement of additional amounts from sources other than the Administration.

1959—Subsec. (d). Pub. L. 86–367 struck out provision for making the grants from the fund established in the Treasury by section 602(b) of the Small Business Investment Act of 1958.

1958—Subsec. (d). Pub. L. 85–699 added subsec. (d).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–447, div. K, title I, § 101(b), Dec. 8, 2004, 118 Stat. 3443, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004].''

Pub. L. 108–447, div. K, title I, § 103(b), Dec. 8, 2004, 118 Stat. 3444, provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004].''

Pub. L. 108–447, div. K, title I, § 107(c), Dec. 8, 2004, 118 Stat. 3446, provided that: ''The amendments made by this section [amending this section] shall take effect on the date of enactment of this Act [Dec. 8, 2004].''

EFFECTIVE DATE OF 2001 AMENDMENT

Amendment by Pub. L. 107–100 effective Oct. 1, 2002, see section 6(e) of Pub. L. 107–100, set out in an Effective Date of 2001 Amendment; Use of Funds note under section 697 of this title.

EFFECTIVE AND TERMINATION DATES OF 1999 AMENDMENTS

Pub. L. 106–50, title IV, § 402(e), Aug. 17, 1999, 113 Stat. 246, provided that:

''(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall take effect on the date of the enactment of this section [Aug. 17, 1999].

''(2) DISASTER LOANS.—The amendments made by subsection (b) [amending this section] shall apply to economic injury suffered or likely to be suffered as the result of a period of military conflict occurring or ending on or after March 24, 1999.''

Pub. L. 106–8, § 3(c), Apr. 2, 1999, 113 Stat. 16, provided that effective Dec. 31, 2000, this section (amending this section and enacting provisions set out as a note under this section) and the amendments made by this section are repealed.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by section 101(f) [title VIII, § 405(d)(10)] of Pub. L. 105–277 effective Oct. 21, 1998, and amendment by section 101(f) [title VIII, § 405(f)(9)] of Pub. L. 105–277 effective July 1, 2000, see section 101(f) [title VIII, § 405(g)(1), (2)(B)] of Pub. L. 105–277, set out as a note under section 3502 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective on Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1995 AMENDMENT

Amendment by Pub. L. 104–36 inapplicable to loans made or guaranteed under Small Business Act or Small Business Investment Act of 1958 before Oct. 12, 1995, unless such loans are refinanced, extended, restructured, or renewed on or after Oct. 12, 1995, see section 8 of Pub. L. 104–36, set out as a note under section 634 of this title.

EFFECTIVE AND TERMINATION DATES OF 1994 AMENDMENT

Section 208(c) of Pub. L. 103–403 provided that: ''The amendments made by this section [amending this section] shall remain in effect during the period beginning on the date of enactment of this Act [Oct. 22, 1994] and ending on October 1, 1997.''

EFFECTIVE DATE OF 1993 AMENDMENT

Section 5(b) of Pub. L. 103–81 provided that: ''Notwithstanding any other provision of law, the amendments made by subsection (a) [amending this section] shall be effective September 1, 1993, but shall not be applicable to loan guarantee applications received by the Administration prior to August 21, 1993. In order to determine the percent of the loan to be guaranteed pursuant to the amendments made by subsection (a), the Administration shall aggregate the outstanding guaranteed principal of multiple loan guarantees issued on behalf of the same borrower.''

EFFECTIVE DATE OF 1992 AMENDMENT

Section 113(b) of Pub. L. 102–366 provided that: ''The amendments made by paragraphs (4) and (5) of sub-

section (a) [amending this section] shall become effective on October 1, 1992.''

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendments by sections 202, 203, 206, 301(a), 408, and 505(h) of Pub. L. 100–656 and subsec. (j)(13)(G) and (I) of this section as added by section 301(b) of Pub. L. 100–656, effective Nov. 15, 1988, see section 803(a) of Pub. L. 100–656, set out as a note under section 631 of this title.

Amendments by sections 201(a), 205, 208, 301(b), (c), and 303(a) of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(A), (B) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by section 302 of Pub. L. 100–656 effective June 1, 1989, see section 803(b)(2) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Subsection (j)(13)(E) of this section as added by section 301(b) of Pub. L. 100–656 effective Oct. 1, 1989, see section 803(b)(4)(D) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendments by sections 119(a) and 120 to 122 of Pub. L. 100–590 effective for all loan applications resulting from disaster declarations made on or after Aug. 1, 1988, or from disaster declarations whose filing periods were open on Oct. 1, 1988, see section 137 of Pub. L. 100–590, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–270 effective Oct. 1, 1983, see section 313 of Pub. L. 98–270, set out as a note under section 632 of this title.

Section 307 of Pub. L. 98–270 provided that: ''The amendments made by sections 304 and 305 of this title [amending this section and provisions set out as a note under section 631 of this title] shall apply to economic dislocations certified by any State Governor to the Small Business Administration after the date of enactment of this Act [Apr. 18, 1984] providing such dislocation commenced since January 1, 1982.''

Amendment by section 311 of Pub. L. 98–270 applicable to loans granted on the basis of any disaster with respect to which a declaration has been issued after Sept. 1, 1982, under subsec. (b)(2)(A), (B), or (C) of this section or with respect to which a certification has been made after such date under subsec. (b)(2)(D) of this section, see section 312 of Pub. L. 98–270, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Section 1910 of Pub. L. 97–35 provided that the repeal of subsec. (a)(6)(C), (8) of this section is effective Oct. 1, 1985.

Amendment by section 1913 of Pub. L. 97–35 effective Oct. 1, 1981, amendments by sections 1902, 1911, 1912, and 1914 of Pub. L. 97–35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

Section 119(d) of Pub. L. 96–302 provided that: ''The amendments made by this section to sections 7(c)(3)(C) [subsection (c)(3) of this section] and 18 [section 647 of this title] of the Small Business Act shall not apply to any disaster which commenced on or before the effective date of this Act.''

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–510 effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as a note under section 634 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 101(d), (e) of Pub. L. 95–89 effective Oct. 1, 1977, see section 106 of Pub. L. 95–89, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 1972 AMENDMENT

Section 1(b) of Pub. L. 92–385 provided that: ''The last paragraph of the amendment made by subsection (a) [amending this section] shall apply only with respect to loans made on or after the date of enactment of this Act [Aug. 16, 1972].''

EFFECTIVE DATE OF 1970 AMENDMENTS

For effective date of amendment by Pub. L. 91–597 see section 29 of Pub. L. 91–597, set out as a note under section 1031 of Title 21, Food and Drugs.

Amendment by Pub. L. 91–596 effective 120 days after Dec. 29, 1970, see section 34 of Pub. L. 91–596, set out as a note under section 651 of Title 29, Labor.

EFFECTIVE DATE OF 1968 AMENDMENT

Amendment by Pub. L. 90–495 effective Aug. 23, 1968, see section 37 of Pub. L. 90–495, set out as a note under section 101 of Title 23, Highways.

EFFECTIVE DATE OF 1966 AMENDMENT

Section 3(c) of Pub. L. 89–409 provided that: ''This section [amending this section, repealing section 637a of this title, and enacting provisions set out as a note under section 633 of this title] shall take effect on July 1, 1966.''

REGULATIONS

Pub. L. 106–50, title IV, §402(d), Aug. 17, 1999, 113 Stat. 246, provided that: ''Not later than 30 days after the date of the enactment of this section [Aug. 17, 1999], the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section [amending this section and enacting provisions set out as notes under this section] and the amendments made by this section.''

Pub. L. 106–8, §3(b), Apr. 2, 1999, 113 Stat. 15, which provided that not later than 30 days after Apr. 2, 1999, Administrator of the Small Business Administration was to issue guidelines to carry out the program under former subsec. (a)(27) of this section, was repealed by Pub. L. 106–8, §3(c), Apr. 2, 1999, 113 Stat. 16, effective Dec. 31, 2000.

Section 114 of Pub. L. 102–366 provided that: ''Not later than 45 days after the date of enactment of this Act [Sept. 4, 1992], the Small Business Administration shall promulgate interim final regulations to implement the amendments made by this subtitle [subtitle B (§§111–115) of title I of Pub. L. 102–366, amending this section, enacting provisions set out as notes below, and amending provisions set out as a note under section 631 of this title].''

Section 609(i) of Pub. L. 102–140 provided that: ''Not later than 90 days after the date of the enactment of this Act [Oct. 28, 1991], the Small Business Administration shall promulgate interim final regulations to implement the microloan demonstration program.''

Section 801 of Pub. L. 100–656, as amended by Pub. L. 101–37, §30, June 15, 1989, 103 Stat. 76, provided that: ''The Small Business Administration shall—

''(1) within 60 days after the date of enactment of this Act [Nov. 15, 1988] conduct meetings of present and potential participants in the program established by section 7(j)(10) of the Small Business Act [15 U.S.C. 636(j)(10)], as amended by this Act, to ascertain and consider public comment on the nature and extent of regulations needed to implement this Act [see Short

Title of 1988 Amendment note set out under section 631 of this title];

''(2) within one hundred and twenty days after the date of enactment of this Act, publish in the Federal Register proposed rules and regulations implementing this Act; and

''(3) within 270 days after the date of enactment of this Act, publish in the Federal Register final rules and regulations implementing this Act.''

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsections (a)(15)(E) and (j)(16)(B) of this section are listed on page 191), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 313(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

TEMPORARY EXTENSION AND EXPANSION OF LOAN PROGRAMS

Pub. L. 108–217, §§4–8, Apr. 5, 2004, 118 Stat. 591–594, provided that:

''SEC. 4. COMBINATION FINANCING.

''(a) IN GENERAL.—During the period beginning on the date of the enactment of this section [Apr. 5, 2004] 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 [Apr. 5, 2004] 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.'.

''SEC. 5. LOAN GUARANTEE FEES.

''(a) IN GENERAL.—During the period beginning on the date of the enactment of this section [Apr. 5, 2004] 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 [Apr. 5, 2004] 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 [Apr. 5, 2004] and ending on September 30, 2004.

''SEC. 6. EXPRESS LOAN PROVISIONS.

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

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

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

''(3) The term 'Express Loan Pilot Program' shall mean the program established by the Administrator prior to the date of enactment of this section [Apr. 5, 2004] 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 [Apr. 5, 2004], 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.

''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 [Apr. 5, 2004] 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 [amending section 697 of this title, enacting this note, and amending provisions set out as a note under section 631 of this title]. 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.

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

''(a) TEMPORARY INCREASE IN AMOUNT PERMITTED TO BE OUTSTANDING AND COMMITTED.—During the period beginning on the date of the enactment of this Act [Apr. 5, 2004] 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.''

BUDGETARY TREATMENT OF LOANS AND FINANCINGS

Pub. L. 107–100, §6(c), Dec. 21, 2001, 115 Stat. 971, provided that: ''Assistance made available under any loan made or approved by the Small Business Administration under section 7(a) of the Small Business Act (15 U.S.C. 636(a)) or financings made under title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 et seq.), during the 2-year period beginning on October 1, 2002, shall be treated as separate programs of the Small Business Administration for purposes of the Federal Credit Reform Act of 1990 [2 U.S.C. 661 et seq.] only.''

ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE

Pub. L. 106–50, title IV, §402(c), Aug. 17, 1999, 113 Stat. 246, provided that: ''For the duration of Operation Allied Force and for 120 days thereafter, the Administration shall enhance its publicity of the availability of assistance provided pursuant to the amendments made by this section [amending this section], including information regarding the appropriate local office at which affected small businesses may seek such assistance.''

EVALUATION OF PREDISASTER MITIGATION PILOT PROGRAM

Pub. L. 106–24, §1(c), Apr. 27, 1999, 113 Stat. 39, provided that, on Jan. 31, 2003, the Administrator of the Small Business Administration was to submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of the pilot program authorized by subsec. (b)(1)(C) of this section.

CONGRESSIONAL FINDINGS REGARDING SMALL BUSINESS YEAR 2000 READINESS

Pub. L. 106–8, §2, Apr. 2, 1999, 113 Stat. 13, provided that: ''Congress finds that—

''(1) the failure of many computer programs to recognize the Year 2000 may have extreme negative financial consequences in the Year 2000, and in subsequent years for both large and small businesses;

''(2) small businesses are well behind larger businesses in implementing corrective changes to their automated systems;

''(3) many small businesses do not have access to capital to fix mission critical automated systems, which could result in severe financial distress or failure for small businesses; and

''(4) the failure of a large number of small businesses due to the Year 2000 computer problem would have a highly detrimental effect on the economy in the Year 2000 and in subsequent years.''

TRANSFER OF FUNDS

Section 202(b) of Pub. L. 105–135 provided that:

''(1) IN GENERAL.—No funds are authorized to be appropriated or otherwise provided to carry out the grant program under section 7(m)(4)(F) of the Small Business

Act (15 U.S.C. 636(m)(4)(F)) (as added by this section), except by transfer from another department or agency of the Federal Government to the Administration in accordance with this subsection.

''(2) LIMITATION ON AMOUNTS.—The total amount transferred to the Administration from other departments and agencies of the Federal Government to carry out the grant program under section 7(m)(4)(F) of the Small Business Act (15 U.S.C. 636(m)(4)(F)) (as added by this section) shall not exceed—

''(A) $3,000,000 for fiscal year 1998;

''(B) $4,000,000 for fiscal year 1999; and

''(C) $5,000,000 for fiscal year 2000.''

DEFENSE LOAN AND TECHNICAL ASSISTANCE PROGRAM

Section 507 of Pub. L. 105–135 provided that:

''(a) DELTA PROGRAM AUTHORIZED.—

''(1) IN GENERAL.—The Administrator may administer the Defense Loan and Technical Assistance program in accordance with the authority and requirements of this section.

''(2) EXPIRATION OF AUTHORITY.—The authority of the Administrator to carry out the DELTA program under paragraph (1) shall terminate when the funds referred to in subsection (g)(1) have been expended.

''(3) DELTA PROGRAM DEFINED.—In this section, the terms 'Defense Loan and Technical Assistance program' and 'DELTA program' mean the Defense Loan and Technical Assistance program that has been established by a memorandum of understanding entered into by the Administrator and the Secretary of Defense on June 26, 1995.

''(b) ASSISTANCE.—

''(1) AUTHORITY.—Under the DELTA program, the Administrator may assist small business concerns that are economically dependent on defense expenditures to acquire dual-use capabilities.

''(2) FORMS OF ASSISTANCE.—Forms of assistance authorized under paragraph (1) are as follows:

''(A) LOAN GUARANTEES.—Loan guarantees under the terms and conditions specified under this section and other applicable law.

''(B) NONFINANCIAL ASSISTANCE.—Other forms of assistance that are not financial.

''(c) ADMINISTRATION OF PROGRAM.—In the administration of the DELTA program under this section, the Administrator shall—

''(1) process applications for DELTA program loan guarantees;

''(2) guarantee repayment of the resulting loans in accordance with this section; and

''(3) take such other actions as are necessary to administer the program.

''(d) SELECTION AND ELIGIBILITY REQUIREMENTS FOR DELTA LOAN GUARANTEES.—

''(1) IN GENERAL.—The selection criteria and eligibility requirements set forth in this subsection shall be applied in the selection of small business concerns to receive loan guarantees under the DELTA program.

''(2) SELECTION CRITERIA.—The criteria used for the selection of a small business concern to receive a loan guarantee under this section are as follows:

''(A) The selection criteria established under the memorandum of understanding referred to in subsection (a)(3).

''(B) The extent to which the loans to be guaranteed would support the retention of defense workers whose employment would otherwise be permanently or temporarily terminated as a result of reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

''(C) The extent to which the loans to be guaranteed would stimulate job creation and new economic activities in communities most adversely affected by reductions in expenditures by the United States for defense, the termination or cancellation of a defense contract, the failure to proceed with an approved major weapon system, the merger or consolidation of the operations of a defense contractor, or the closure or realignment of a military installation.

''(D) The extent to which the loans to be guaranteed would be used to acquire (or permit the use of other funds to acquire) capital equipment to modernize or expand the facilities of the borrower to enable the borrower to remain in the national technology and industrial base available to the Department of Defense.

''(3) ELIGIBILITY REQUIREMENTS.—To be eligible for a loan guarantee under the DELTA program, a borrower must demonstrate to the satisfaction of the Administrator that, during any 1 of the 5 preceding operating years of the borrower, not less than 25 percent of the value of the borrower's sales were derived from—

''(A) contracts with the Department of Defense or the defense-related activities of the Department of Energy; or

''(B) subcontracts in support of defense-related prime contracts.

''(e) MAXIMUM AMOUNT OF LOAN PRINCIPAL.—With respect to each borrower, the maximum amount of loan principal for which the Administrator may provide a guarantee under this section during a fiscal year may not exceed $1,250,000.

''(f) LOAN GUARANTY RATE.—The maximum allowable guarantee percentage for loans guaranteed under this section may not exceed 80 percent.

''(g) FUNDING.—

''(1) IN GENERAL.—The funds that have been made available for loan guarantees under the DELTA program and have been transferred from the Department of Defense to the Small Business Administration before the date of the enactment of this Act [Dec. 2, 1997] shall be used for carrying out the DELTA program under this section.

''(2) CONTINUED AVAILABILITY OF EXISTING FUNDS.—The funds made available under the second proviso under the heading 'RESEARCH, DEVELOPMENT, TEST AND EVALUATION, DEFENSE-WIDE' in Public Law 103–335 (108 Stat. 2613) shall be available until expended—

''(A) to cover the costs (as defined in section 502(5) of the Federal Credit Reform Act of 1990 (2 U.S.C. 661a(5))) of loan guarantees issued under this section; and

''(B) to cover the reasonable costs of the administration of the loan guarantees.''

TRADE ASSISTANCE PROGRAM FOR SMALL BUSINESS CONCERNS ADVERSELY AFFECTED BY NAFTA

Section 509 of Pub. L. 105–135 provided that: ''The Administrator shall coordinate Federal assistance in order to provide counseling to small business concerns adversely affected by the North American Free Trade Agreement.''

PRIVATE SECTOR LOAN SERVICING DEMONSTRATION PROGRAM

Pub. L. 104–208, div. D, title I, §104(a), Sept. 30, 1996, 110 Stat. 3009–729, provided that:

''(1) IN GENERAL.—

''(A) DEMONSTRATION PROGRAM REQUIRED.—Notwithstanding any other provision of law, the Administration shall conduct a demonstration program, within the parameters described in paragraph (2), to evaluate the comparative costs and benefits of having the Administration's portfolio of disaster loans serviced under contract rather than directly by employees of the Administration. All costs of the demonstration program shall be paid from amounts made available for the Salaries and Expenses Account of the Administration.

''(B) INITIATION DATE.—Not later than 90 days after the date of enactment of this Act [Sept. 30, 1996], the Administration shall issue a request for proposals for the program parameters described in paragraph (2).

''(2) DEMONSTRATION PROGRAM PARAMETERS.—

''(A) LOAN SAMPLE.—The sample of loans for the demonstration program shall be randomly drawn from the Administration's portfolio of loans made pursuant to section 7(b) of the Small Business Act [15 U.S.C. 636(b)] and shall include a representative group of not less than 30 percent of all loans for residential properties, including 30 percent of all loans made during the demonstration program after the date of enactment of this Act, which loans shall be selected by the Administration on the basis of geographic distribution and such other factors as the Administration determines to be appropriate.

''(B) CONTRACT AND OPTIONS.—The Administration shall solicit and competitively award one or more contracts to service the loans included in the sample of loans described in subparagraph (A) for a term of not less than one year, with 3 one-year contract renewal options, each of which shall be exercised by the Administration unless the Administration terminates the contractor or contractors for good cause.

''(3) TERM OF DEMONSTRATION PROGRAM.—The demonstration program shall commence not later than October 1, 1997.

''(4) REPORTS.—

''(A) INTERIM REPORTS.—Not later than 120 days before the expiration of the initial 4-year contract performance period, the Administrator shall submit to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] an interim report on the conduct of the demonstration program. The contractor shall be afforded a reasonable opportunity to attach comments to each such report.

''(B) FINAL REPORT.—Not later than 120 days after the termination of the demonstration program, the Administrator shall submit to the Committees on Small Business of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] a final report on the performance of the demonstration program, together with the recommendations of the Administrator for continuation, termination, or modification of the demonstration program.''

INCREASE OF AMOUNTS FOR DISASTER LOANS

Pub. L. 103–75, Aug. 12, 1993, 107 Stat. 740, provided in part: ''That notwithstanding any other provision of law, the $500,000 limitation on the amounts outstanding and committed to a borrower provided in paragraph 7(c)(6) of the Small Business Act [15 U.S.C. 636(c)(6)] shall be increased to $1,500,000 for disasters commencing on or after April 1, 1993.''

CONGRESSIONAL FINDINGS OF MICROLENDING EXPANSION ACT OF 1992

Section 112 of Pub. L. 102–366 provided that: ''The Congress finds that—

''(1) nationwide, there are many individuals who possess skills that, with certain short-term assistance, could enable them to become successfully self-employed;

''(2) many talented and skilled individuals who are employed in low-wage occupations could, with sufficient opportunity, start their own small business concerns, which could provide them with an improved standard of living;

''(3) most such individuals have little or no savings, a nonexistent or poor credit history, and no access to credit or capital with which to start a business venture;

''(4) women, minorities, and individuals residing in areas of high unemployment and high levels of poverty have particular difficulty obtaining access to credit or capital;

''(5) providing such individuals with small-scale, short-term financial assistance in the form of microloans, together with intensive marketing, management, and technical assistance, could enable them to start or maintain small businesses, to become self-sufficient, and to raise their standard of living;

''(6) banking institutions are reluctant to provide such assistance because of the administrative costs associated with processing and servicing the loans and because they lack experience in providing the type of marketing, management, and technical assistance needed by such borrowers;

''(7) many organizations that have had successful experiences in providing microloans and marketing, management, and technical assistance to such borrowers exist throughout the Nation; and

''(8) loans from the Federal Government to intermediaries for the purpose of relending to start-up, newly established and growing small business concerns are an important catalyst to attract private sector participation in microlending.''

DISADVANTAGED SMALL BUSINESS STATUS DECISIONS

Section 221 of Pub. L. 102–366 provided that:

''(a) PUBLICATION OF DECISIONS.—A decision issued pursuant to section 7(j)(11)(F)(vii) of the Small Business Act (15 U.S.C. 636(j)(11)(F)(vii)) shall—

''(1) 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

''(2) include findings of fact and conclusions of law, with specific reasons supporting such findings or conclusions, upon each material issue of fact and law of decisional significance regarding the disposition of the protest.

''(b) PRECEDENTIAL VALUE OF PRIOR DECISIONS.—A decision issued under section 7(j)(11)(F)(vii) of the Small Business Act that is issued prior to the date of enactment of this Act [Sept. 4, 1992] shall not have value as precedent in deciding any subsequent protest until such time as the decision is published in full text.''

REAUTHORIZATION OF BOND WAIVER TEST PROGRAM

Pub. L. 102–190, div. A, title VIII, §813(a)–(e), Dec. 5, 1991, 105 Stat. 1424, provided that:

''(a) AUTHORITY.—(1) In the award of construction contracts by the Department of Defense to participants in the Minority Small Business and Capital Ownership Development Program of the Small Business Administration, the Secretary of Defense may exercise the authority to grant surety bond exemptions to such participants provided by section 7(j)(13)(D) of the Small Business Act (15 U.S.C. 636(j)(13)(D)). In any case in which the Secretary exercises such authority, the Secretary may award a construction contract directly to a participant in such program, without approval by or consultation with the Small Business Administration.

''(2) In exercising the authority provided by paragraph (1), the Secretary of Defense shall make every reasonable effort to award not fewer than 30 contracts for construction projects (including repair and alteration of existing facilities) during each fiscal year.

''(b) DELEGATION OF AUTHORITY.—The Secretary of Defense shall delegate to one or more Secretaries of a military department the authority provided by subsection (a)(1).

''(c) NO RIGHT OF ACTION AGAINST THE UNITED STATES.—A dispute between a contractor granted a surety bond exemption pursuant to section 7(j)(13)(D) of the Small Business Act and a subcontractor at any tier or a supplier of such contractor relating to the amount or entitlement of a payment due such subcontractor or supplier does not constitute a dispute to which the United States is a party. The United States may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

''(d) REGULATIONS.—The Secretary of Defense shall prescribe final regulations and procedures for exercising the authority provided in this section not later than 270 days after the date of the enactment of this Act [Dec. 5, 1991].

''(e) PROGRAM DURATION.—The authority provided by this section shall apply to contracts awarded before October 1, 1994.''

EMERGENCY DIRECT LOANS FOR SMALL BUSINESS CONCERNS LOCATED IN COMMUNITIES ADVERSELY AFFECTED BY TROOP DEPLOYMENTS DURING PERSIAN GULF CONFLICT

Pub. L. 102–190, div. A, title X, § 1087, Dec. 5, 1991, 105 Stat. 1483, authorized emergency direct loans to small business concerns located in counties in which at least 5 small business concerns suffered severe economic injury resulting from deployment, after July 31, 1990, of troops in connection with Persian Gulf conflict, provided that loan amounts could not exceed $50,000 to any small business concern, and provided for source of loan funds, applications for loans, definitions, regulations to implement loan program, and expiration of loan authority at end of 270-day period beginning on date on which loan applications were first accepted.

TERMINATION OF MICROLOAN DEMONSTRATION PROGRAM

Section 609(j) of Pub. L. 102–140, as amended by Pub. L. 103–403, title II, § 203, Oct. 22, 1994, 108 Stat. 4181, provided that: ''The demonstration program established by subsection (h) [amending this section] shall terminate on October 1, 1997.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

TEST PROGRAM FOR USE OF BOND WAIVER AUTHORITY TO ASSIST CERTAIN SMALL DISADVANTAGED BUSINESS CONCERNS

Pub. L. 101–189, div. A, title VIII, § 833, Nov. 29, 1989, 103 Stat. 1509, which directed Secretary of Defense and Small Business Administration to establish a program for fiscal years 1990 and 1991 to test use of authority provided by subsec. (j)(13)(D) of this section, and that under the test program, the Secretary of Defense was to make every reasonable effort during each such fiscal year to award not less than 30 contracts for construction projects (including repair and alteration of existing facilities) to participants in Minority Small Business and Capital Ownership Development Program of Small Business Administration granted surety bond exemptions under such authority, was repealed by Pub. L. 102–190, div. A, title VIII, § 813(f), Dec. 5, 1991, 105 Stat. 1424.

DEFINITION OF TERMS USED IN PUB. L. 100–656

Section 2 of Pub. L. 100–656, as amended by Pub. L. 101–37, § 3, June 15, 1989, 103 Stat. 70, provided that: ''For the purposes of this Act [see Short Title of 1988 Amendment note set out under section 631 of this title]—

''(1) the term 'Administration' means the Small Business Administration;

''(2) the term 'Administrator' means the Administrator of the Small Business Administration, unless otherwise indicated;

''(3) the term 'Business Opportunity Specialist' means the Administration employee responsible for providing business development assistance to Program Participants pursuant to sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a));

''(4) the term 'disadvantaged owners' means those individuals upon whom eligibility is based for participation in the Program and the award of subcontracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a));

''(5) the term 'minority owned businesses' means business concerns that are at least 51 percent owned and controlled by one or more individuals who belong to those groups described or identified pursuant to section 2(e)(1)(C) of the Small Business Act (15 U.S.C. 631(e)(1)(C));

''(6) the term 'Program' means the Minority Small Business and Capital Ownership Development Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), unless otherwise indicated;

''(7) the term 'Program Participant' means a small business concern participating in the Program; and

''(8) the term 'Program Participation Term' means the fixed period of time assigned to a Program Participant pursuant to section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) prior to the date of enactment of this Act [Nov. 15, 1988].''

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSES OF PUB. L. 100–656

Section 101 of Pub. L. 100–656 provided that:

''(a) FINDINGS.—The Congress finds that—

''(1) the Capital Ownership Development Program administered by the Small Business Administration and the award of contracts pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)] remain a primary tool for improving opportunities for small business concerns owned and controlled by socially and economically disadvantaged individuals in the Federal procurement process and bringing such concerns into the nation's economic mainstream;

''(2) although some progress has resulted from the Program, it has generally failed to meet its objectives, which remain as valid now as when the Program was initiated;

''(3) too few concerns that have exited the Program have been prepared to compete successfully in the open marketplace on competitive procurements, and many concerns have developed an unhealthy dependency on sole-source contracts by the time they are required to leave the Program;

''(4) the application and certification process for admitting new participants to the Program is inordinately lengthy and burdensome;

''(5) the Administration has often not efficiently and equitably administered and managed the Program in a manner that provided clear lines of responsibility for implementing and monitoring many of the administrative duties under the Program;

''(6) the Administration and some program participants have given insufficient attention and support to the business development goals of the Program and instead have focused almost entirely on the size of contract awards or the number of firms certified to participate in the Program;

''(7) many Federal procuring agencies have failed to identify and offer the necessary amount of contract support in order to allow for diversification and growth of disadvantaged businesses participating in the Program;

''(8) contract support as well as business development expenses have been misused both by the Administration and Program participants and have not been equitably distributed pursuant to objective criteria;

''(9) the widespread perception of undue political influence in the operation and administration of the Program has significantly contributed to the Program's poor image and has deterred utilization of the Program by socially and economically disadvantaged concerns and by Federal procuring agencies; and

''(10) it is imperative that increased competition and other substantial reforms be accomplished in the Program in order to promote the Congressionally mandated business development objectives and purposes.

''(b) PURPOSES.—The purposes of this Act [see Short Title of 1988 Amendment note set out under section 631 of this title] therefore are to—

''(1) affirm that the Capital Ownership Development Program and the section 8(a) [15 U.S.C. 637(a)] authority shall be used exclusively for business development purposes to help small businesses owned and controlled by the socially and economically disadvantaged to compete on an equal basis in the mainstream of the American economy;

''(2) affirm that the measure of success of the Capital Ownership Development Program, and the section 8(a) authority, shall be the number of competitive firms that exit the Program without being unreasonably reliant on section 8(a) contracts and that are able to compete on an equal basis in the mainstream of the American economy;

''(3) ensure that program benefits accrue to individuals who are both socially and economically disadvantaged;

''(4) increase the number of small businesses owned and controlled by such individuals from which the United States may purchase products and services (including construction work); and

''(5) ensure integrity, competence, and efficiency in the administration of business development services and the Federal contracting opportunities made available to eligible small businesses.''

EMPLOYEE TRAINING AND EVALUATION

Pub. L. 100–656, title IV, §410, Nov. 15, 1988, 102 Stat. 3879, as amended by Pub. L. 101–37, §18, June 15, 1989, 103 Stat. 74, provided that:

''(a) TRAINING REQUIREMENTS FOR BUSINESS OPPORTUNITY SPECIALISTS.—(1) In each Small Business Administration field office responsible for assisting one or more Program Participants there shall be a position designated as a Business Opportunity Specialist. To the maximum extent practicable the Administration shall assure that an adequate number of Business Opportunity Specialists are assigned to each district office to carry out the responsibilities of sections 7(j) and 8(a) of the Small Business Act (15 U.S.C. 636(j), 637(a)) and to assist Program Participants.

''(2) The Administration shall take such actions as may be appropriate to ensure that any person employed as a Business Opportunity Specialist receives adequate periodic training to assure such employee is capable of assisting Program Participants to fully utilize the Program and to meet the requirements of the Small Business Act [15 U.S.C. 631 et seq.], as amended by this Act.

''(b) PILOT PROGRAM.—(1) Within 180 days after the effective date of this subsection [Nov. 15, 1988] the Administrator shall designate three regions of the Administration to conduct a pilot program pursuant to the provisions of this subsection. The designated regions shall contain approximately 30 per centum of the total number of Program Participants as of the time of designation.

''(2) A Business Opportunity Specialist employed in a Region designated pursuant to paragraph (1), in addition to other assigned duties and responsibilities, shall—

''(A) conduct contract negotiations on behalf of the Administration for contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) when performance will be rendered by one or more firms in such Specialist's assigned portfolio;

''(B) facilitate and otherwise assist such firms in negotiating for the receipt of contracts to be let pursuant to such section.

''(3) The Administration shall take such actions as may be appropriate to train and qualify such Specialists to perform the negotiations required pursuant to paragraph (2).

''(4) To the extent practicable, the Administrator shall ensure that the performance appraisal system applicable to a Business Opportunity Specialist employed in a region designated pursuant to paragraph (1) affords substantial recognition to how well such Specialist's assigned portfolio of concerns participating in the program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) are achieving competitiveness and furthering the business development purposes of the program.

''(5) The Administration shall establish personnel positions for Business Opportunity Specialists employed in the regions designated pursuant to paragraph (1) that are classified at a grade level of the General Schedule that are sufficient, in the opinion of the Administrator, to attract and retain highly qualified personnel.

''(c) REPORT AND PILOT PROGRAM TERMINATION.—(1) Within 120 days after the termination of the pilot program conducted pursuant to subsection (b), the Administration shall issue a report to the Committees on Small Business of the Senate and of the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] on the effectiveness of the pilot. Such report shall contain such recommendations for administrative or legislative change as may be appropriate.

''(2) The pilot program conducted pursuant to subsection (b) shall be terminated three years after the date on which the Committees on Small Business of the Senate and of the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] receive written notification from the Administrator that the pilot is in full operation in each of the three designated pilot regions.''

GENERAL ACCOUNTING OFFICE REPORT

Section 504 of Pub. L. 100–656 directed Comptroller General of the United States to conduct a review of operation of Minority Small Business and Capital Ownership Development Program authorized by subsec. (j)(10) of this section and contract assistance provided pursuant to section 637(a)(15) of this title commencing within 180 days of Nov. 15, 1988, and concluding Sept. 30, 1991, such review to report on implementation of provisions of Pub. L. 100–656 by Small Business Administration and various executive departments and agencies providing contracting opportunities to the Program, and directed Comptroller General to prepare a report summarizing findings of review, make such recommendations as may be appropriate, and transmit report to Committees on Small Business of the Senate and House of Representatives by Feb. 1, 1992.

COMMISSION ON MINORITY BUSINESS DEVELOPMENT

Pub. L. 100–656, title V, §505(a)–(g), Nov. 15, 1988, 102 Stat. 3883, as amended by Pub. L. 101–37, §20, June 15, 1989, 103 Stat. 74; Pub. L. 101–574, title II, §211, Nov. 15, 1990, 104 Stat. 2821; Pub. L. 102–366, title II, §231(a), Sept. 4, 1992, 106 Stat. 1001; Pub. L. 103–160, div. A, title IX, §904(f), Nov. 30, 1993, 107 Stat. 1729, established the Commission on Minority Business Development, set out its duties, powers, membership, administration, and personnel, and provided that it cease to exist within 90 days after the date that it transmitted its final report to Congress and to the President or Sept. 30, 1992, whichever was later.

LIMITATIONS ON SPENDING AUTHORITY

Section 802(f) of Pub. L. 100–656 provided that:

''(1) Any new credit authority or authority to enter into contracts provided for in this Act [see Short Title of 1988 Amendment note set out under section 631 of this title] is to be effective for any fiscal year only to such extent or in such amounts as are provided in appropriation Acts.

''(2) No funds are authorized to be appropriated in subsequent appropriation Acts to the Administration for the purpose of making grants of financial assistance under the so called 'Business Development Expense' program to any firm participating in the programs authorized by section 7(j)(10) or section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)).''

CERTIFIED LOAN PROGRAM; EXPANDED PARTICIPATION; REPORTS TO CONGRESS

Section 102(b) of Pub. L. 100–590 provided that: ''The Administration shall take appropriate steps to expand

participation in the certified loan program and shall report to the Small Business Committees of the Senate and the House of Representatives on the amount of loans approved and the amount of losses sustained under the provisions of section 7(a)(19) of the Small Business Act [15 U.S.C. 636(a)(19)]. An interim report shall be submitted not later than one year after date of enactment of this Act [Nov. 3, 1988] and a final report shall be submitted not later than 18 months after the date of enactment.''

Similar provisions were contained in Pub. L. 100–533, title III, § 302(b), Oct. 25, 1988, 102 Stat. 2693.

PIPELINE LOANS OR PREVIOUS DISASTERS

Section 18006(b) of Pub. L. 99–272, as amended by Pub. L. 99–349, title I, July 2, 1986, 100 Stat. 718, provided that: ''Notwithstanding the amendments made by this section [amending sections 636 and 647 of this title], sections 18002 [amending provisions set out as a note under section 631 of this title] and 18016 [amending section 632 of this title], or any other provision of law, the Small Business Administration shall continue to accept, process, and approve loan applications under paragraphs (1) through (4) of subsection [section] 7(b) of the Small Business Act [15 U.S.C. 636(b)(1) to (4)] and shall obligate and disburse loan funds on account of disasters which occurred prior to October 1, 1985, and with respect to which a disaster declaration application was submitted prior to October 1, 1985, even if any such application is filed after the date of the enactment of this Act [Apr. 7, 1986].''

DETERMINATION OF NATURAL DISASTER BY SECRETARY OF AGRICULTURE TO BE DEEMED DISASTER DECLARATION BY ADMINISTRATOR OF SMALL BUSINESS ADMINISTRATION; DISASTERS COMMENCING BETWEEN JANUARY 1, 1983, AND SEPTEMBER 30, 1983

Pub. L. 98–166, title I, § 101, Nov. 28, 1983, 97 Stat. 1079, provided in part that: ''beginning with disasters commencing between January 1, 1983, through September 30, 1983, determination of a natural disaster by the Secretary of Agriculture pursuant to 7 U.S.C. 1961 shall be deemed a disaster declaration by the Administrator of the Small Business Administration for purposes of determining eligibility for assistance under section 7(b)(1) of the Small Business Act [subsec. (b)(1) of this section] for agricultural enterprises as defined in section 18(b) of the Small Business Act [15 U.S.C. 647(b)]: *Provided*, That nothing in this paragraph is to preclude the applicability of section 18(a) of the Small Business Act [15 U.S.C. 647(a)] with regard to the duplication of benefits for disasters commencing between January 1, 1983, through September 30, 1983.''

REPORTS TO CONGRESS; DEFAULT RATE OF LOANS

Section 1907 of Pub. L. 97–35 required the Small Business Administration to submit to Congress, not later than Feb. 28, 1984, and 1985, reports containing specific information on the aggregate number, dollar value, and default rate of all loans with respect to 15 U.S.C. 636(a)(5), (6)(C), (8)(A).

BUSINESS PLANS; SUBMITTAL BY CONCERNS ELIGIBLE TO RECEIVE CONTRACTS

Section 106(b) of Pub. L. 96–481 provided that: ''Notwithstanding the provisions of subsection (a) of this section [amending subsec. (j)(10)(A)(i) of this section], for concerns eligible to receive contracts pursuant to section 8(a) of the Small Business Act [section 637(a) of this title] on the effective date of the amendment made by this section [Oct. 21, 1980], each such concern shall submit to the Small Business Administration within two months after the promulgation of final regulations issued within one hundred and twenty days after the enactment of this Act [Oct. 21, 1981] the business plan required under section 7(j)(10)(A)(i) of the Small Business Act, as amended by subsection (a) of this section [subsec. (j)(10)(A)(i) of this section]: *Provided however*, That the period of time required under section 7(j)(10)(A)(i) of the Small Business Act, as amended by subsection (a) of this section, shall be fixed as mutually agreed upon by the program participant and the Small Business Administration prior to the awarding or extending of contracts to such concern pursuant to section 8(a) of the Small Business Act after June 1, 1981, but the period shall be fixed in no case later than eighteen months after the effective date of this Act: *Provided further*, That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 8(a)(9) of the Small Business Act.''

SMALL BUSINESS EMPLOYEE OWNERSHIP; CONGRESSIONAL FINDINGS AND PURPOSES

Sections 502 and 503 of Pub. L. 96–302 provided that:

''SEC. 502. The Congress hereby finds and declares that—

''(1) employee ownership of firms provides a means for preserving jobs and business activity;

''(2) employee ownership of firms provides a means for keeping a small business small when it might otherwise be sold to a conglomerate or other large enterprise;

''(3) employee ownership of firms provides a means for creating a new small business from the sale of a subsidiary of a large enterprise;

''(4) unemployment insurance programs, welfare payments, and job creation programs are less desirable and more costly for both the Government and program beneficiaries than loan guarantee programs to maintain employment in firms that would otherwise be closed, liquidated, or relocated; and

''(5) by guaranteeing loans to qualified employee trusts and similar employee organizations, the Small Business Administration can provide feasible and desirable methods for the transfer of all or part of the ownership of a small business concern to its employees.

''SEC. 503. (a) The purposes of this title [enacting sections 632(c) and 636(a)(8) of this title and provisions set out as notes under sections 631 and 636 of this title] are—

''(1) to provide that a qualified employee trust shall be eligible for loan guarantees under section 7(a) of the Small Business Act [subsec. (a) of this section] with respect to a small business concern, regardless of the percentage of stock of the concern held by the trust, and

''(2) to provide in section 505 of this Act [enacting subsec. (a)(8) of this section] authority to address the specific case in which the Small Business Administration guarantees loans under section 7(a) of the Small Business Act [subsec. (a) of this section] for purposes of providing funds to a qualified employee trust (and other employee organizations which are treated as qualified employee trusts) for the purchase, by at least 51 percent of the employees, of at least 51 percent of the stock of business which is operated for profit and which is—

''(A) a small business concern, or

''(B) a corporation which is controlled by another person if, after the plan for the purchase of such corporation is carried out, such corporation would be a small business concern.

''(b) Nothing in this title shall be construed to prohibit the Small Business Administration from making loan guarantees under section 7(a) of the Small Business Act [subsec. (a) of this section] to qualified employee trusts which own less than 51 percent of the stock of a continuing business.''

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to

the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

DISASTER RELIEF AUTHORITY; STUDY AND REPORT ON CONSOLIDATION

Section 101 of Pub. L. 94–305 provided that: ''The President shall undertake a comprehensive review of all Federal disaster loan authorities and shall make a report to the Congress, not later than December 1, 1976, containing such recommendations and legislative proposals, including possible consolidation of Federal disaster loan authorities, as may be demonstrated to be necessary and appropriate to assure the most effective and efficient delivery of disaster relief. Such study shall give particular emphasis to alleviating any extraordinary burden the management of Federal disaster loan programs may impose on an agency.''

DISASTER LOANS; SPECIAL PROVISIONS FOR APPLICATIONS RECEIVED ON OR BEFORE MARCH 19, 1981; ASSISTANCE TO HARDSHIP APPLICANTS

Section 1916 of Pub. L. 97–35 provided that:

''(a) Notwithstanding section 5(b)(6) of the Small Business Act [section 634(b)(6) of this title], or any other provision of law, any business concern applicant for assistance made pursuant to paragraph (1), (2), or (4) of subsection 7(b) of the Small Business Act [subsec. (b)(1), (2), or (4) of this section] whose application was received but not approved by the Small Business Administration on or before March 19, 1981, shall be offered loan assistance by the Small Business Administration as provided in this section.

''(b) The Small Business Administration is specifically directed to reconsider and act upon any such application and to make, remake, obligate, reobligate, commit or recommit such financing as provided herein.

''(c) If the applicant was a business concern able to obtain credit elsewhere, the terms and conditions shall be those specified in section 7(b)(3) of the Small Business Act [subsec. (b)(3) of this section]; but if the Administrator determines that imposition of these provisions would impose a substantial hardship on the applicant, he may, in his discretion on a case-by-case basis waive these provisions and provide assistance in accord with rules and regulations in effect for the date the disaster commenced for applicants able to secure credit elsewhere. If the applicant was a business concern unable to obtain credit elsewhere, or was an applicant under sections 7(b)(2) or 7(b)(4) of the Small Business Act [subsec. (b)(2) or (4) of this section], the terms and conditions shall be those in effect for such applicants on the date such application was first received. As used herein, the term 'credit elsewhere' shall have the meaning prescribed by the Small Business Act as amended herein [this chapter].''

DISASTER LOANS; INTEREST RATE; CANCELLATION OF LOANS

Section 9 of Pub. L. 93–24, Apr. 20, 1973, 87 Stat. 25, provided that: ''Notwithstanding the provisions of any other law, any loan made by the Small Business Administration in connection with any disaster occurring on or after the date of enactment of this Act [Apr. 20, 1973] under sections 7(b)(1), (2), or (4) of the Small Business Act (15 U.S.C. 636(b)(1), (2), or (4)) [subsec. (b)(1), (2), or (4) of this section] shall bear interest at the rate determined under section 324 of the Consolidated Farm and Rural Development Act, as amended by section 4 of this Act [section 1964 of Title 7, Agriculture]. No portion of any such loan shall be subject to cancellation under the provisions of any law.''

INTEREST RATES ON LOANS TO MEET REGULATORY STANDARDS

Section 2(d) of Pub. L. 93–237 provided that: ''In no case shall the interest rate charged for loans to meet regulatory standards be lower than loans made in connection with physical disasters.''

ELECTION OF BENEFITS

Section 1(c) of Pub. L. 92–385 provided that: ''Any person who (1) suffers any loss or damage as a result of a major disaster as determined by the President which occurred prior to the date of enactment of this Act [August 16, 1972], (2) is eligible for assistance under the amendment made by subsection (a), and (3) is otherwise eligible for benefits greater than those provided by the amendment made by subsection (a), may elect to receive such greater benefits.''

FUND FOR MANAGEMENT COUNSELING

Section 602(a), (b) of Pub. L. 85–699 provided that:

''(a) Within sixty days after the enactment of this Act [Aug. 21, 1958], each Federal Reserve bank shall pay to the United States the aggregate amount which the Secretary of the Treasury has heretofore paid to such bank under the provisions of section 13b of the Federal Reserve Act [12 U.S.C. 352a]; and such payment shall constitute a full discharge of any obligation or liability of the Federal Reserve bank to the United States or to the Secretary of the Treasury arising out of subsection (e) of said section 13b [12 U.S.C. 352a(e)] or out of any agreement thereunder.

''(b) The amounts repaid to the United States pursuant to subsection (a) of this section shall be covered into a special fund in the Treasury which shall be available for grants under section 7(d) of the Small Business Act [subsec. (d) of this section]. Any remaining balance of funds set aside in the Treasury for payments under section 13b of the Federal Reserve Act [12 U.S.C. 352a] shall be covered into the Treasury as miscellaneous receipts.''

LOANS FOR MODIFICATIONS OF MINING FACILITIES AND EQUIPMENT

Section 504(d) of Pub. L. 91–173 provided that: ''Loans may also be made or guaranteed for the purposes set forth in section 7(b)(5) of the Small Business Act, as amended [subsec. (b)(5) of this section], pursuant to the provisions of section 202 of the Public Works and Economic Development Act of 1965, as amended [42 U.S.C. 3142].''

EXECUTIVE ORDER NO. 12190

Ex. Ord. No. 12190, Feb. 1, 1980, 45 F.R. 7773, established the Advisory Committee on Small and Minority Business Ownership to assist in monitoring and encouraging the placement of subcontracts by the private sector with eligible small businesses, to study and propose incentives and assistance needed by the private sector to help in the training, development, and upgrading of such businesses, to make periodic reports and recommendations to the President, and to report annually to the President and to the Congress on the activities of the Committee and provided for termination of the Committee on Dec. 31, 1980.

EXTENSION OF TERM OF ADVISORY COMMITTEE ON SMALL AND MINORITY BUSINESS OWNERSHIP

Term of the Advisory Committee on Small and Minority Business Ownership extended until Dec. 31, 1982, by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1984, by Ex. Ord. No. 12399, Dec. 31, 1982, 48 F.R. 379, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1985, by Ex. Ord. No. 12489, Sept. 28, 1984, 49 F.R. 38927, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1987, by Ex. Ord. No. 12534, Sept. 30, 1985, 50 F.R. 40319, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1989, by Ex. Ord. No. 12610, Sept. 30, 1987, 52 F.R. 36901, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of the Advisory Committee on Small and Minority Business Ownership extended until Sept. 30, 1991, by Ex. Ord. No. 12692, Sept. 29, 1989, 54 F.R. 40627, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, which extension was revoked by amendment of Ex. Ord. No. 12692, by Ex. Ord. No. 12704, Feb. 26, 1990, 55 F.R. 6969.

### § 636a. Repealed. Pub. L. 97–35, title XIX, § 1917, Aug. 13, 1981, 95 Stat. 781

Section, Pub. L. 91–606, title II, § 231, Dec. 31, 1970, 84 Stat. 1752; Pub. L. 92–385, § 6, Aug. 16, 1972, 86 Stat. 559, related to small business disaster loans.

EFFECTIVE DATE OF REPEAL

Repeal effective Aug. 13, 1981, but not to affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as an Effective Date of 1981 Amendment note under section 631 of this title.

### § 636b. Disaster loan interest rates

Any loan made under section 636a[1] of this title and section 4452[1] of title 42 shall not exceed the current cost of repairing or replacing the disaster injury, loss, or damage in conformity with current codes and specifications. Any loan made under sections 636a[1] and 636d of this title, and sections 3538 and 4452[1] of title 42 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 ten to twelve years reduced by not to exceed 2 per centum per annum. In no event shall any loan made under this section bear interest at a rate in excess of 6 per centum per annum.

(Pub. L. 91–606, title II, § 234, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 636a of this title, referred to in text, was repealed by Pub. L. 97–35, title XIX, § 1917, Aug. 13, 1981, 95 Stat. 781.

Section 4452 of title 42, referred to in text, was repealed by Pub. L. 93–24, § 7, Apr. 20, 1973, 87 Stat. 25.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4453 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

[1] See References in Text note below.

### § 636c. Age of applicant for disaster loans

In the administration of any Federal disaster loan program under the authority of section 636a[1] of this title, section 4452[1] of title 42, or section 233 of Public Law 91–606, the age of any adult loan applicant shall not be considered in determining whether such loan should be made or the amount of such loan.

(Pub. L. 91–606, title II, § 235, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 636a of this title, referred to in text, was repealed by Pub. L. 97–35, title XIX, § 1917, Aug. 13, 1981, 95 Stat. 781.

Section 4452 of title 42, referred to in text, was repealed by Pub. L. 93–24, § 7, Apr. 20, 1973, 87 Stat. 25.

Section 233 of Public Law 91–606, referred to in text, amended section 1820(a)(2), (f) [now 3720(a)(2), (f)] of Title 38, Veterans' Benefits.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4454 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Dec. 31, 1970, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

### § 636d. Disaster aid to major sources of employment

#### (a) Loans to disaster areas

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 has constituted a major source of employment in an area suffering a major disaster and which is no longer in substantial operation as a result of such disaster, a loan in such amount as may be necessary to enable such enterprise to resume operations in order to assist in restoring the economic viability of the disaster area. Loans authorized by this section shall be made without regard to limitations on the size of loans which may otherwise be imposed by any other provision of law or regulations promulgated pursuant thereto.

#### (b) Interest; deferred payments

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 deemed appropriate by the Director under the authority of section 4418[1] of title 42. Any loan made under this section shall be subject to the interest requirements of section 636b of this title, but the President, if he deems it necessary, may defer payments of principal and interest for a period not to exceed three years after the date of the loan. Any such deferred payments shall bear in-

[1] See References in Text note below.

terest at the rate determined under section 636b of this title.

(Pub. L. 91–606, title II, § 237, Dec. 31, 1970, 84 Stat. 1754.)

REFERENCES IN TEXT

Section 4418 of title 42, referred to in subsec. (b), was repealed by Pub. L. 93–288, title VI, § 603, May 22, 1974, 88 Stat. 164. Provisions similar to former section 4418 of Title 42, The Public Health and Welfare, are contained in section 5155 of Title 42.

CODIFICATION

Section was enacted as part of the Disaster Relief Act of 1970, and not as part of the Small Business Act which comprises this chapter. Section was formerly classified to section 4456 of Title 42, The Public Health and Welfare.

EFFECTIVE DATE

Section effective Aug. 1, 1969, see section 304 of Pub. L. 91–606, set out as an Effective Date of 1970 Amendment note under section 165 of Title 26, Internal Revenue Code.

## § 637. Additional powers

### (a) Procurement contracts; subcontracts to disadvantaged small business concerns; performance bonds; contract negotiations; definitions; eligibility; determinations; publication; recruitment; construction subcontracts; annual estimates; Indian tribes

(1) It shall be the duty of the Administration and it is hereby empowered, whenever it determines such action is necessary or appropriate—

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Administration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administration may notify the contracting officer of the intent to appeal such adverse decision, and within 15 days of such date the Administrator shall file a written request for a reconsideration of the adverse decision with the Secretary of the department or agency head. For the purposes of this subparagraph, a procurement officer's adverse decision includes a decision not to make available for award pursuant to this subsection a particular procurement requirement or the failure to agree on the terms and conditions of a contract to be awarded noncompetitively under the authority of this subsection. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head, unless such officer makes a written determination that urgent and compelling circumstances which significantly affect interests of the United States will not permit waiting for a reconsideration of the adverse decision. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons why the selected firm was determined to be incapable to perform the procurement requirement, and the findings supporting such determination, which shall be made a part of the contract file for the requirement. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price;

(B) to arrange for the performance of such procurement contracts by negotiating or otherwise letting subcontracts to socially and economically disadvantaged small business concerns for construction work, services, or the manufacture, supply, assembly of such articles, equipment, supplies, materials, or parts thereof, or servicing or processing in connection therewith, or such management services as may be necessary to enable the Administration to perform such contracts;

(C) to make an award to a small business concern owned and controlled by socially and economically disadvantaged individuals which has completed its period of Program Participation as prescribed by section 636(j)(15) of this title, if—

(i) 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 pursuant to subparagraph (D); and

(ii) 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; and

(D)(i) A contract opportunity offered for award pursuant to this subsection shall be awarded on the basis of competition restricted to eligible Program Participants if—

(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

(II) the anticipated award price of the contract (including options) will exceed $5,000,000 in the case of a contract opportunity assigned a standard industrial classification code for manufacturing and $3,000,000 (including options) in the case of all other contract opportunities.

(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a nondelegable basis, is author-

ized to approve a request from an agency to award a contract opportunity under this subsection 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 clause (i)(II). Such approvals shall be granted only on a limited basis.

(2) Notwithstanding subsections (a), (b), and (e) of section 3131 of title 40, no small business concern shall be required to provide any amount of any bond as a condition of receiving any subcontract under this subsection if the Administrator determines that such amount is inappropriate for such concern in performing such contract: *Provided*, That the Administrator shall exercise the authority granted by the paragraph only if—

(A) the Administration takes such measures as it deems appropriate for the protection of persons furnishing materials and labor to a small business receiving any benefit pursuant to this paragraph;

(B) the Administration assists, insofar as practicable, a small business receiving the benefits of this paragraph to develop, within a reasonable period of time, such financial and other capability as may be needed to obtain such bonds as the Administration may subsequently require for the successful completion of any program conducted under the authority of this subsection;

(C) the Administration finds that such small business is unable to obtain the requisite bond or bonds from a surety and that no surety is willing to issue bond or bonds subject to the guarantee provisions of Title IV of the Small Business Investment Act of 1958 [15 U.S.C. 692 et seq.]; and

(D) the small business is determined to be a start-up concern and such concern has not been participating in any program conducted under the authority of this subsection for a period exceeding one year.

The authority to waive bonds provided in this paragraph (2) may not be exercised after September 30, 1988.

(3)(A) Any Program Participant selected by the Administration to perform a contract to be let noncompetitively pursuant to this subsection shall, when practicable, participate in any negotiation of the terms and conditions of such contract.

(B)(i) For purposes of paragraph (1) a ''fair market price'' shall be determined by the agency offering the procurement requirement to the Administration, in accordance with clauses (ii) and (iii).

(ii) 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. Such analysis may take into account prevailing market conditions, commercial prices for similar products or services, or data obtained from any other agency. Such analysis shall consider such cost or pricing data as may be timely submitted by the Administration.

(iii) 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 insure comparability. Such adjustments 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 which may be deemed appropriate.

(C) An agency offering a procurement requirement for potential award pursuant to this subsection shall, upon the request of the Administration, promptly submit to the Administration a written statement detailing the method used by the agency to estimate the current fair market price for such contract, identifying the information, studies, analyses, and other data used by such agency. The agency's estimate of the current fair market price (and any supporting data furnished to the Administration) shall not be disclosed to any potential offeror (other than the Administration).

(D) A small business concern selected by the Administration to perform or negotiate a contract to be let pursuant to this subsection may request the Administration to protest the agency's estimate of the fair market price for such contract pursuant to paragraph (1)(A).

(4)(A) For purposes of this section, the term ''socially and economically disadvantaged small business concern'' means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is at least 51 per centum 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 such tribe), or

(III) an economically disadvantaged Native Hawaiian organization, or

(ii) in the case of any publicly owned business, at least 51 per centum of the stock 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 such tribe), or

(III) an economically disadvantaged Native Hawaiian organization.

(B) A small business concern meets the requirements of this subparagraph if the management and daily business operations of such small business concern are controlled by one or more—

(i) socially and economically disadvantaged individuals described in subparagraph (A)(i)(I) or subparagraph (A)(ii)(I),

(ii) members of an economically disadvantaged Indian tribe described in subparagraph (A)(i)(II) or subparagraph (A)(ii)(II), or

(iii) Native Hawaiian organizations described in subparagraph (A)(i)(III) or subparagraph (A)(ii)(III).

(C) Each Program Participant shall certify, on an annual basis, that it meets the requirements of this paragraph regarding ownership and control.

(5) Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(6)(A) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets.

(B) Each Program Participant shall annually submit to the Administration—

(i) a personal financial statement for each disadvantaged owner;

(ii) a record of all payments made by the Program Participant to each of its disadvantaged owners or to any person or entity affiliated with such owners; and

(iii) such other information as the Administration may deem necessary to make the determinations required by this paragraph.

(C)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration has reason to believe that the standards to establish economic disadvantage pursuant to subparagraph (A) have not been met, the Administration shall conduct a review to determine whether such 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 when compared to other concerns in the same business area, which are not socially disadvantaged.

(ii) If the Administration determines, pursuant to such review, that a Program Participant and its disadvantaged owners are no longer economically disadvantaged for the purpose of receiving assistance under this subsection, the Program Participant shall be graduated pursuant to section 636(j)(10)(G) of this title subject to the right to a hearing as provided for under paragraph (9).

(D)(i) Whenever, on the basis of information provided by a Program Participant pursuant to subparagraph (B) or otherwise, the Administration 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 such owners may have been unduly excessive, the Administration shall conduct a review to determine whether such withdrawal of funds or other assets was detrimental to the achievement of the targets, objectives, and goals contained in such Program Participant's business plan.

(ii) If the Administration determines, pursuant to such review, that funds or other assets have been withdrawn to the detriment of the Program Participant's business, the Administration shall—

(I) initiate a proceeding to terminate the Program Participant pursuant to section 636(j)(10)(F) of this title, subject to the right to a hearing under paragraph (9); or

(II) require an appropriate reinvestment of funds or other assets and such other steps as the Administration may deem necessary to ensure the protection of the concern.

(E) Whenever the Administration computes personal net worth for any purpose under this paragraph, it shall exclude from such computation—

(i) the value of investments that disadvantaged owners have in their concerns, except that such value shall be taken into account under this paragraph when comparing such concerns to other concerns in the same business area that are owned by other than socially disadvantaged persons;

(ii) the equity that disadvantaged owners have in their primary personal residences, except that any portion of such equity that is attributable to unduly excessive withdrawals from a Program Participant or a concern applying for program participation shall be taken into account.

(7)(A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.

(B) Limitations established by the Administration in its regulations and procedures restricting the award of contracts pursuant to this subsection to a limited number of standard industrial classification codes in an approved business plan shall not be applied in a manner that inhibits the logical business progression by a participating small business concern into areas of industrial endeavor where such concern has the potential for success.

(8) All determinations made pursuant to paragraph (5) 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. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

(9)(A) Subject to the provisions of subparagraph (E), the Administration, prior to taking any action described in subparagraph (B), shall provide the small business concern that is the subject of such action, an opportunity for a hearing on the record, in accordance with chapter 5 of title 5.

(B) The actions referred to in subparagraph (A) are—

(i) denial of program admission based upon a negative determination pursuant to paragraph (4), (5), or (6);

(ii) a termination pursuant to section 636(j)(10)(F) of this title;

(iii) a graduation pursuant to section 636(j)(10)(G) of this title; and

(iv) the denial of a request to issue a waiver pursuant to paragraph (21)(B).

(C) The Administration's proposed action, in any proceeding conducted under the authority of this paragraph, shall be sustained unless it is found to be arbitrary, capricious, or contrary to law.

(D) A decision rendered pursuant to this paragraph shall be the final decision of the Administration and shall be binding upon the Administration and those within its employ.

(E) The adjudicator selected to preside over a proceeding conducted under the authority of this paragraph shall decline to accept jurisdiction over any matter that—

(i) does not, on its face, allege facts that, if proven to be true, would warrant reversal or modification of the Administration's position;

(ii) is untimely filed;

(iii) is not filed in accordance with the rules of procedure governing such proceedings; or

(iv) has been decided by or is the subject of an adjudication before a court of competent jurisdiction over such matters.

(F) Proceedings conducted pursuant to the authority of this paragraph shall be completed and a decision rendered, insofar as practicable, within ninety days after a petition for a hearing is filed with the adjudicating office.

(10) The Administration shall develop and implement an outreach program to inform and recruit small business concerns to apply for eligibility for assistance under this subsection. Such program shall make a sustained and substantial effort to solicit applications for certification from 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 from small disadvantaged business concerns in industry categories that have not substantially participated in the award of contracts let under the authority of this subsection.

(11) To the maximum extent practicable, construction subcontracts awarded by the Administration pursuant to this subsection shall be awarded within the county or State where the work is to be performed.

(12)(A) The Administration shall require each concern eligible to receive subcontracts pursuant to this subsection to annually prepare and submit to the Administration a capability statement. Such statement shall briefly describe such concern's various contract performance capabilities and shall contain the name and telephone number of the Business Opportunity Specialist assigned such concern. The Administration shall separate such statements by those primarily dependent upon local contract support and those primarily requiring a national marketing effort. Statements primarily dependent upon local contract support shall be disseminated to appropriate buying activities in the marketing area of the concern. The remaining statements shall be disseminated to the Directors of Small and Disadvantaged Business Utilization for the appropriate agencies who shall further distribute such statements to buying activities with such agencies that may purchase the types of items or services described on the capability statements.

(B) Contracting activities receiving capability statements shall, within 60 days after receipt, contact the relevant Business Opportunity Specialist to indicate the number, type, and approximate dollar value of contract opportunities that such activities may be awarding over the succeeding 12-month period and which may be appropriate to consider for award to those concerns for which it has received capability statements.

(C) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 in fiscal year 1988, or in any succeeding fiscal year, shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts 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.

(iv) The activity responsible for the award and administration of the contract.

(D) The head of each executive agency subject to the provisions of subparagraph (C) shall within 10 days of completion furnish such forecasts to—

(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 644(k) of this title for such agency; and

(ii) the Administrator.

(E) The information reported pursuant to subparagraph (D) may be limited to classes of items and services for which there are substantial annual purchases.

(F) Such forecasts shall be available to small business concerns.

(13) For purposes of this subsection, the term ''Indian tribe'' means any 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.]) which—

(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 such tribe, band, nation, group, or community resides.

(14)(A) A concern may not be awarded a contract under this subsection as a small business concern unless the concern agrees that—

(i) 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; and

(ii) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

(B) The Administrator may change the percentage under clause (i) or (ii) of subparagraph (A) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category. A percentage established under the preceding sentence may not differ from a percentage established under section 644(*o*) of this title.

(C) The Administration shall establish, through public rulemaking, requirements similar to those specified in subparagraph (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 such subparagraph. The percentage applicable to any such requirement shall be determined in accordance with subparagraph (B), except that such a percentage may not differ from a percentage established under section 644(*o*) of this title for the same industry category.

(15) For purposes of this subsection, the term ''Native Hawaiian Organization'' means any community service organization serving Native Hawaiians in the State of Hawaii which—

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

(B) is controlled by Native Hawaiians, and

(C) whose business activities will principally benefit such Native Hawaiians.

(16)(A) The Administration shall award sole source contracts under this section to any small business concern recommended by the procuring agency offering the contract opportunity if—

(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

(ii) the award of such contract would be consistent with the Program Participant's business plan; and

(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 636(j)(10)(I) of this title.

(B) To the maximum extent practicable, the Administration shall promote the equitable geographic distribution of sole source contracts awarded pursuant to this subsection.

(17)(A) An otherwise responsible business concern that is in compliance with the requirements of subparagraph (B) shall not be denied the opportunity to submit and have considered its offer for any procurement contract for the supply of a product to be let pursuant to this subsection or subsection (a) of section 644 of this title solely because such concern is other than the actual manufacturer or processor of the product to be supplied under the contract.

(B) To be in compliance with the requirements referred to in subparagraph (A), such a business concern shall—

(i) be primarily engaged in the wholesale or retail trade;

(ii) be a small business concern under the numerical size standard for the Standard Industrial Classification Code assigned to the contract solicitation on which the offer is being made;

(iii) be a regular dealer, as defined pursuant to section 35(a)[1] of title 41 (popularly referred to as the Walsh-Healey Public Contracts Act), in the product to be offered the Government or be specifically exempted from such section by section 636(j)(13)(C) of this title; and

(iv) represent that it will supply the product of a domestic small business manufacturer or processor, unless a waiver of such requirement is granted—

(I) 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

(II) 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.

(18)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of two years after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant during such person's term of employment, if such person participated personally (either directly or indirectly) in decision-making responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 636(j)(10) of this title, or section 636(a)(20) of this title.

(B) The activities and transactions prohibited by subparagraph (A) include—

(i) 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;

(ii) 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 clause (i); or

[1] See References in Text note below.

(iii) the receipt of any other benefit or right that may be an incident of ownership.

(C)(i) The employees designated in clause (ii) shall annually submit a written certification to the Administration regarding compliance with the requirements of this paragraph.

(ii) The employees referred to in clause (i) are—

(I) regional administrators;

(II) district directors;

(III) the Associate Administrator for Minority Small Business and Capital Ownership Development;

(IV) employees whose principal duties relate to the award of contracts or the provision of other assistance pursuant to this subsection or section 636(j)(10) of this title; and

(V) such other employees as the Administrator may deem appropriate.

(iii) Any present or former employee of the Administration who violates this paragraph shall be subject to a civil penalty, assessed by the Attorney General, that shall not exceed 300 per centum of the maximum amount of gain such employee realized or could have realized as a result of engaging in those activities and transactions prescribed[2] by subparagraph (B).

(iv) In addition to any other remedy or sanction provided for under law or regulation, any person who falsely certifies pursuant to clause (i) shall be subject to a civil penalty under the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812).

(19)(A) Any 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 conducted pursuant to this subsection or section 636(j) of this title, shall not, with respect to any such action, exercise or threaten to exercise such authority on the basis of the political activity or affiliation of any party. Employees of the Administration shall expeditiously report to the Inspector General of the Administration any such action for which such employee's participation has been solicitated[3] or directed.

(B) Any employee who willfully and knowingly violates subparagraph (A) shall be subject to disciplinary action which may consist of separation from service, reduction in grade, suspension, or reprimand.

(C) Subparagraph (A) shall not apply to any action taken as a penalty or other enforcement of a violation of any law, rule, or regulation prohibiting or restricting political activity.

(D) The prohibitions of subparagraph (A), and remedial measures provided for under subparagraphs (B) and (C) with regard to such prohibitions, shall be in addition to, and not in lieu of, any other prohibitions, measures or liabilities that may arise under any other provision of law.

(20)(A) Small business concerns participating in the Program under section 636(j)(10) of this title and eligible to receive contracts pursuant to this section shall semiannually report to their assigned Business Opportunity Specialist the following:

(i) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

(ii) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

(B) The Business Opportunity Specialist shall promptly review and forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development. Any report that raises a suspicion of improper activity shall be reported immediately to the Inspector General of the Administration.

(C) The failure to submit a report pursuant to the requirements of this subsection and applicable regulations shall be considered ''good cause'' for the initiation of a termination proceeding pursuant to section 636(j)(10)(F) of this title.

(21)(A) Subject to the provisions of subparagraph (B), a contract (including options) awarded pursuant to this subsection shall be performed by the concern that initially received such contract. Notwithstanding the provisions of the preceding sentence, if the owner or owners upon whom eligibility was based relinquish ownership or control of such concern, or enter into any agreement to relinquish such ownership or control, such contract or option shall be terminated for the convenience of the Government, except that no repurchase costs or other damages may be assessed against such concerns due solely to the provisions of this subparagraph.

(B) The Administrator may, on a nondelegable basis, waive the requirements of subparagraph (A) only if one of the following conditions exist:

(i) When it is necessary for the owners of the concern to surrender partial control of such concern on a temporary basis in order to obtain equity financing.

(ii) The head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions;

(iii) Ownership and control of the concern that is performing the contract will pass to another small business concern that is a program participant, but only if the acquiring firm would otherwise be eligible to receive the award directly pursuant to subsection (a) of this section;

(iv) The individuals upon whom eligibility was based are no longer able to exercise control of the concern due to incapacity or death; or

(v) When, in order to raise equity capital, it is necessary for the disadvantaged owners of the concern to relinquish ownership of a majority of the voting stock of such concern, but only if—

(I) such concern has exited the Capital Ownership Development Program;

(II) the disadvantaged owners will maintain ownership of the largest single outstanding block of voting stock (including stock held by affiliated parties); and

[2] So in original. Probably should be ''proscribed''.

[3] So in original. Probably should be ''solicited''.

(III) the disadvantaged owners will maintain control of daily business operations.

(C) The Administrator may waive the requirements of subparagraph (A) if—

(i) in the case of subparagraph (B) (i), (ii) and (iv), he is requested to do so prior to the actual relinquishment of ownership or control; and

(ii) in the case of subparagraph (B)(iii), he is requested to do so as soon as possible after the incapacity or death occurs.

(D) Concerns performing contracts awarded pursuant to this subsection shall be required to notify the Administration immediately upon entering an agreement (either oral or in writing) to transfer all or part of its stock or other ownership interest to any other party.

(E) Notwithstanding any other provision of law, for the purposes of determining ownership and control of a concern under this section, any potential ownership interests held by investment companies licensed under the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.] shall be treated in the same manner as interests held by the individuals upon whom eligibility is based.

**(b) Procurement and property disposal powers; determination of small-business concerns**

It shall also be the duty of the Administration and it is empowered, whenever it determines such action is necessary—

(1)(A) to provide technical, managerial, and informational aids to small business concerns—

(i) by advising and counseling on matters in connection with Government procurement and policies, principles, and practices of good management;

(ii) by cooperating and advising with—

(I) voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions (except that the Administration shall take such actions as it determines necessary to ensure that such cooperation does not constitute or imply an endorsement by the Administration of the organization or its products or services, and shall ensure that it receives appropriate recognition in all printed materials); and

(II) other Federal and State agencies;

(iii) by maintaining a clearinghouse for information on managing, financing, and operating small business enterprises; and

(iv) by disseminating such information, including through recognition events, and by other activities that the Administration determines to be appropriate.

(B) To establish, conduct, and publicize, and to recruit, select, and train volunteers for (and to enter into contracts, grants, or cooperative agreements therefor), volunteer programs, including a Service Corps of Retired Executives (SCORE) and an Active Corps of Executive (ACE) for the purposes of subparagraph (A). To facilitate the implementation of such volunteer programs the Administration shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any such payments made pursuant to this subparagraph shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this chapter, and may use payments made by the Administration pursuant to this subparagraph for such solicitation and the management of the contributions received.

(C) To allow any individual or group of persons participating with it in furtherance of the purposes of subparagraphs (A) and (B) to use the Administration's office facilities and related material and services as the Administration deems appropriate, including clerical and stenographic services:

(i) such volunteers, while carrying out activities under this paragraph shall be deemed Federal employees for the purposes of the Federal tort claims provisions in title 28; and for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries) shall be deemed civil employees of the United States within the meaning of the term ''employee'' as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except that in computing compensation benefits for disability or death, the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS–11 employee;

(ii) the Administrator is authorized to reimburse such volunteers for all necessary out-of-pocket expenses incident to their provision of services under this chapter, or in connection with attendance at meetings sponsored by the Administration, or for the cost of malpractice insurance, as the Administrator shall determine, in accordance with regulations which he or she shall prescribe, and, while they are carrying out such activities away from their homes or regular places of business, for travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of title 5 for individuals serving without pay; and

(iii) such volunteers shall in no way provide services to a client of such Administration with a delinquent loan outstanding, except upon a specific request signed by such client for assistance in connection with such matter.

(D) Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to this paragraph 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.

(E) In carrying out its functions under subparagraph (A), to make grants (including contracts and cooperative agreements) to any 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, which students shall be entitled to receive educational credits for their activities.

(F) Notwithstanding any other provision of law and pursuant to regulations which the Administrator shall prescribe, counsel may be employed and counsel fees, court costs, bail, and other expenses incidental to the defense of volunteers may be paid in judicial or administrative proceedings arising directly out of the performance of activities pursuant to this paragraph, to which volunteers have been made parties.

(G) In carrying out its functions under this chapter and to carry out the activities authorized by title IV of the Women's Business Ownership Act of 1988 [15 U.S.C. 7101 et seq.], the Administration is authorized to accept, in the name of the Administration, and employ or dispose of in furtherance of the purposes of this chapter, any money or property, real, personal, or mixed, tangible, or intangible, received by gift, devise, bequest, or otherwise; and, further, to accept gratuitous services and facilities.

(2) to make a complete inventory of all productive facilities of small-business concerns or to arrange for such inventory to be made by any other governmental agency which has the facilities. In making any such inventory, the appropriate agencies in the several States may be requested to furnish an inventory of the productive facilities of small-business concerns in each respective State if such an inventory is available or in prospect;

(3) to coordinate and to ascertain the means by which the productive capacity of small-business concerns can be most effectively utilized;

(4) to 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;

(5) to obtain information as to methods and practices which Government prime contractors utilize in letting subcontracts and to take action to encourage the letting of subcontracts by prime contractors to small-business concerns at prices and on conditions and terms which are fair and equitable;

(6) to determine within any industry the concerns, firms, persons, corporations, partnerships, cooperatives, or other business enterprises which are to be designated ''small-business concerns'' for the purpose of effectuating the provisions of this chapter. To carry out this purpose the Administrator, when requested to do so, shall issue in response to each such request an appropriate certificate certifying an individual concern as a ''small-business concern'' in accordance with the criteria expressed in this chapter. Any such certificate shall be subject to revocation when the concern covered thereby ceases to be a ''small-business concern''. Offices of the Government having procurement or lending powers, 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 Administration's determination as to which enterprises are to be designated ''small-business concerns'', as authorized and directed under this paragraph;

(7)(A) To certify to Government procurement officers, and officers engaged in the sale and disposal of Federal property, with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract. A Government procurement officer or an officer engaged in the sale and disposal of Federal property may not, for any reason specified in the preceding sentence preclude any small business concern or group of such concerns from being awarded such contract without referring the matter for a final disposition to the Administration.

(B) If a Government procurement officer finds that an otherwise qualified small business concern may be ineligible due to the provisions of section 35(a)[4] of title 41, he shall notify the Administration in writing of such finding. The Administration shall review such finding and shall either dismiss it and certify the small business concern to be an eligible Government contractor for a specific Government contract or if it concurs in the finding, forward the matter to the Secretary of Labor for final disposition, in which case the Administration may certify the small business concern only if the Secretary of Labor finds the small business concern not to be in violation.

(C) In any case in which a small business concern or group of such concerns has been certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract, the officers of the Government having procurement or property disposal powers are directed to accept such certification as conclusive, and shall let such Government contract to such concern or group of concerns without requiring it to meet any other requirement of responsibility or eligibility. Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.

(8) to obtain from any Federal department, establishment, or 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 it may deem pertinent in carrying out its functions under this chapter;

[4] See References in Text note below.

(9) to obtain from any Federal department, establishment, or agency engaged in the disposal of Federal property such reports concerning the solicitation of bids, time of sale, or otherwise as it may deem pertinent in carrying out its functions under this chapter;

(10) to obtain from suppliers of materials information pertaining to the method of filling orders and the bases for allocating their supply, whenever it appears that any small business is unable to obtain materials from its normal sources;

(11) to make studies and recommendations to the appropriate Federal agencies to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, to insure that a fair proportion of Government contracts for research and development be placed with small-business concerns, to insure that a fair proportion of the total sales of Government property be made to small-business concerns, and to insure a fair and equitable share of materials, supplies, and equipment to small-business concerns;

(12) to consult and cooperate with all Government agencies for the purpose of insuring that small-business concerns shall receive fair and reasonable treatment from such agencies;

(13) to establish such advisory boards and committees as may be necessary to achieve the purposes of this chapter and of the Small Business Investment Act of 1958 [15 U.S.C. 661 et seq.]; to call meetings of such boards and committees from time to time; to pay the transportation expenses and a per diem allowance in accordance with section 5703 of title 5 to the members of such boards and committees for travel and subsistence expenses incurred at the request of the Administration in connection with travel to points more than fifty miles distant from the homes of such members in attending the meeting of such boards and committees; and to rent temporarily, within the District of Columbia or elsewhere, such hotel or other accommodations as are needed to facilitate the conduct of such meetings;

(14) to provide at the earliest practicable time such information and assistance as may be appropriate, including information concerning eligibility for loans under section 636(b)(3) 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 such small-business concerns in reestablishing their operations;

(15) to disseminate, without regard to the provisions of section 3204 of title 39 data and information, in such form as it shall deem appropriate, to public agencies, private organizations, and the general public;

(16) to make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and to make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business; and

(17) to make grants to, and enter into contracts and cooperative agreements with, educational institutions, private businesses, veterans' nonprofit community-based organizations, and Federal, State, and local departments and agencies for the establishment and implementation of outreach programs for disabled veterans (as defined in section 4211(3) of title 38), veterans, and members of a reserve component of the Armed Forces.

**(c) [Reserved]**

**(d) Performance of contracts by small business concerns; inclusion of required contract clause; subcontracting plans; contract eligibility; incentives; breach of contract; review; report to Congress**

(1) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women, 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 small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

(2) The clause stated in paragraph (3) shall be included in all contracts let by any Federal agency except any contract which—

(A) does not exceed the simplified acquisition threshold;

(B) including all subcontracts under such contracts will be performed entirely outside of any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(C) is for services which are personal in nature.

(3) The clause required by paragraph (2) shall be as follows:

''(A) It is the policy of the United States that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in the performance of contracts let by any Federal agen-

cy, 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 small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women.

''(B) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the contractor's compliance with this clause.

''(C) As used in this contract, the term 'small business concern' shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto. The term 'small business concern owned and controlled by socially and economically disadvantaged individuals' shall mean a small business concern—

''(i) which is at least 51 per centum owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

''(ii) whose management and daily business operations are controlled by one or more of such 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 Administration pursuant to section 8(a) of the Small Business Act.

''(D) The term 'small business concern owned and controlled by women' shall mean a small business concern—

''(i) which is at least 51 per centum owned by one or more women; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more women; and

''(ii) whose management and daily business operations are controlled by one or more women.

''(E) The term 'small business concern owned and controlled by veterans' shall mean a small business concern—

''(i) which is at least 51 per centum owned by one or more eligible veterans; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is owned by one or more veterans; and

''(ii) whose management and daily business operations are controlled by such veterans. The contractor shall treat as veterans all individuals who are veterans within the meaning of the term under section 3(q) of the Small Business Act.

''(F) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern, small business concern owned and controlled by veterans, small business concern owned and controlled by service-disabled veterans, a small business concern owned and controlled by socially and economically disadvantaged individuals, or a small business concern owned and controlled by women.

''(G) In this contract, the term 'qualified HUBZone small business concern' has the meaning given that term in section 3(p) of the Small Business Act.''

(4)(A) Each solicitation of an offer for a contract to be let by a Federal agency which is to be awarded pursuant to the negotiated method of procurement and which may exceed $1,000,000, in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, shall contain a clause notifying potential offering companies of the provisions of this subsection relating to contracts awarded pursuant to the negotiated method of procurement.

(B) Before the award of any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded, or was let, pursuant to the negotiated method of procurement,

(ii) is required to include the clause stated in paragraph (3),

(iii) may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000 in the case of all other contracts, and

(iv) which offers subcontracting possibilities,

the apparent successful offeror shall negotiate with the procurement authority a subcontracting plan which incorporates the information prescribed in paragraph (6). The subcontracting plan shall be included in and made a material part of the contract.

(C) If, within the time limit prescribed in regulations of the Federal agency concerned, the apparent successful offeror fails to negotiate the subcontracting plan required by this paragraph, such offeror shall become ineligible to be awarded the contract. Prior compliance of the offeror with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of that offeror for the award of the contract.

(D) No contract shall be awarded to any offeror unless the procurement authority determines that the plan to be negotiated by the offeror pursuant to this paragraph provides the maximum practicable opportunity for small business concerns, qualified HUBZone small business concerns, small business concerns

owned and controlled by veterans, 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 to participate in the performance of the contract.

(E) Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection and for small business concerns owned and controlled by women, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the contract: *Provided*, That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(F)(i) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a clause for the payment of liquidated damages upon a finding that a prime contractor has failed to make a good faith effort to comply with the requirements imposed on such contractor by this subsection.

(ii) The 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 thereof. The final decision of a contracting officer regarding the contractor's obligation to pay such damages, or the amounts thereof, shall be subject to the Contract Disputes Act of 1978 (41 U.S.C. 601–613).

(iii) Each agency shall ensure that the goals offered by the apparent successful bidder or offeror are attainable in relation to—

(I) the subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(II) the pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(III) the actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(G) The following factors shall be designated by the Federal agency as significant factors for purposes of evaluating offers for a bundled contract where the head of the agency determines that the contract offers a significant opportunity for subcontracting:

(i) A factor that is based on the rate provided under the subcontracting plan for small business participation in the performance of the contract.

(ii) 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.

(5)(A) Each solicitation of a bid for any contract to be let, or any amendment or modification to any contract let, by any Federal agency which—

(i) is to be awarded pursuant to the formal advertising method of procurement,

(ii) is required to contain the clause stated in paragraph (3) of this subsection,

(iii) may exceed $1,000,000 in the case of a contract for the construction of any public facility, or $500,000, in the case of all other contracts, and

(iv) offers subcontracting possibilities,

shall contain a clause requiring any bidder who is selected to be awarded a contract to submit to the Federal agency concerned a subcontracting plan which incorporates the information prescribed in paragraph (6).

(B) If, within the time limit prescribed in regulations of the Federal agency concerned, the bidder selected to be awarded the contract fails to submit the subcontracting plan required by this paragraph, such bidder shall become ineligible to be awarded the contract. Prior compliance of the bidder with other such subcontracting plans shall be considered by the Federal agency in determining the responsibility of such bidder for the award of the contract. The subcontracting plan of the bidder awarded the contract shall be included in and made a material part of the contract.

(6) Each subcontracting plan required under paragraph (4) or (5) shall include—

(A) percentage goals for the utilization as subcontractors of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women;

(B) 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 such individual;

(C) a description of the efforts the offeror or bidder will take to assure that small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women will have an equitable opportunity to compete for subcontracts;

(D) assurances that the offeror or bidder will include the clause required by paragraph (2) of this subsection in all subcontracts which offer further subcontracting opportunities, and that the offeror or bidder will require all subcontractors (except small business concerns) who receive subcontracts in excess of $1,000,000 in the case of a contract for the construction of any public facility, or in excess of $500,000 in the case of all other contracts, to adopt a plan similar to the plan required under paragraph (4) or (5);

(E) assurances that the offeror or bidder will submit such periodic reports and cooperate in any studies or surveys as may be required by the Federal agency or the Administration in order to determine the extent of compliance by the offeror or bidder with the subcontracting plan; and

(F) a recitation of the types of records the successful offeror or bidder will maintain to demonstrate procedures which have been adopted to comply with the requirements and goals set forth in this plan, including the establishment of source lists of small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women; and efforts to identify and award subcontracts to such small business concerns.

(7) The provisions of paragraphs (4), (5), and (6) shall not apply to offerors or bidders who are small business concerns.

(8) The failure of any contractor or subcontractor to comply in good faith with—

(A) the clause contained in paragraph (3) of this subsection, or

(B) any plan required of such contractor pursuant to the authority of this subsection to be included in its contract or subcontract,

shall be a material breach of such contract or subcontract.

(9) Nothing contained in this subsection shall be construed to supersede the requirements of Defense Manpower Policy Number 4A (32A CFR Chap. 1) or any successor policy.

(10) In the case of contracts within the provisions of paragraphs (4), (5), and (6), the Administration is authorized to—

(A) assist Federal agencies and businesses in complying with their responsibilities under the provisions of this subsection, including the formulation of subcontracting plans pursuant to paragraph (4);

(B) review any solicitation for any contract to be let pursuant to paragraphs (4) and (5) to determine the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by veterans, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate as subcontractors in the performance of any contract resulting from any solicitation, and to submit its findings, which shall be advisory in nature, to the appropriate Federal agency; and

(C) evaluate compliance with subcontracting plans, either on a contract-by-contract basis, or in the case contractors having multiple contracts, on an aggregate basis.

(11) For purposes of determining the attainment of a subcontract utilization goal under any subcontracting plan entered into with any executive agency pursuant to this subsection, a mentor firm providing development assistance to a protege firm under the pilot Mentor-Protege Program established pursuant to section 831 of the National Defense Authorization Act for Fiscal Year 1991 (Public Law 101–510; 10 U.S.C. 2301 note [2302 note]) shall be granted credit for such assistance in accordance with subsection (g) of such section.

**(e) Covered executive agency activities; procurement notice; publication; time limitations**

(1) Except as provided in subsection (g) of this section—

(A) an executive agency intending to—

(i) solicit bids or proposals for a contract for property or services for a price expected to exceed $25,000; or

(ii) 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 (f) of this section;

(B) 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 ten days, in a public place at the contracting office issuing the solicitation a notice of solicitation described in subsection (f) of this section—

(i) 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

(ii) 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;

(C) an executive agency awarding a contract for property or services for a price exceeding $100,000, or placing an order referred to in clause (A)(ii) 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 any subcontract under such contract or order.

(2)(A) A notice of solicitation required to be published under paragraph (1) may be published—

(i) by electronic means that meet the accessibility requirements under section 416(a)(7) of title 41; or

(ii) by the Secretary of Commerce in the Commerce Business Daily.

(B) The Secretary of Commerce shall promptly publish in the Commerce Business Daily each notice or announcement received under this subsection for publication by that means.

(3) Whenever an executive agency is required by paragraph (1)(A) to publish a notice of solicitation, such executive agency may not—

(A) issue the solicitation earlier than 15 days after the date on which the notice is published; or

(B) 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 paragraph (1)(A) that—

(i) in the case of an order under a basic agreement, basic ordering agreement, or

similar arrangement, is earlier than the date 30 days after the date the notice required by paragraph (1)(A)(ii) is published;

(ii) in the case of a solicitation for research and development, is earlier than the date 45 days after the date the notice required by paragraph (1)(A)(i) is published; or

(iii) in any other case, is earlier than the date 30 days after the date the solicitation is issued.

**(f) Contents of notice**

Each notice of solicitation required by subparagraph (A) or (B) of subsection (e)(1) of this section shall include—

(1) an accurate description of the property or services to be contracted for, which description (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 to make an informed business judgment as to whether a copy of the solicitation should be requested;

(2) provisions that—

(A) state whether the technical data required to respond to the solicitation will not be furnished as part of such solicitation, and identify the source in the Government, if any, from which the technical data may be obtained; and

(B) state whether an offeror, its product, or service must meet a qualification requirement in order to be eligible for award, and, if so, identify the office from which a qualification requirement may be obtained;

(3) the name, business address, and telephone number of the contracting officer;

(4) a statement that all responsible sources may submit a bid, proposal, or quotation (as appropriate) which shall be considered by the agency;

(5) 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

(6) in the case of a contract in an amount estimated to be greater than $25,000 but not greater than the simplified acquisition threshold—

(A) a description of the procedures to be used in awarding the contract; and

(B) a statement specifying the periods for prospective offerors and the contracting officer to take the necessary preaward and award actions.

**(g) Exempted, etc., activities of executive agency**

(1) A notice is not required under subsection (e)(1) of this section if—

(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and 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, Government-wide point of entry; and

(ii) permitting the public to respond to the solicitation electronically.

(B) the notice would disclose the executive agency's needs and the disclosure of such needs would compromise the national security;

(C) the proposed procurement would result from acceptance of—

(i) any unsolicited proposal that demonstrates a unique and innovative research concept and the publication of any notice of such unsolicited research proposal would disclose the originality of thought or innovativeness of the proposal or would disclose proprietary information associated with the proposal; or

(ii) a proposal submitted under section 638 of this title;

(D) the procurement is made against an order placed under a requirements contract;

(E) the procurement is made for perishable subsistence supplies;

(F) the procurement is for utility services, other than telecommunication services, and only one source is available; or

(G) the procurement is for the services 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.

(2) The requirements of subsection (a)(1)(A) of this section do not apply to any procurement under conditions described in 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 paragraph (2), (3), (4), (5), or (7) of section 2304(c) of title 10.

(3) The requirements of subsection (a)(1)(A) of this section shall not apply in the case of any procurement for which the head of the executive agency makes a determination in writing, after consultation with the Administrator for Federal Procurement Policy and the Administrator of the Small Business Administration, that it is not appropriate or reasonable to publish a notice before issuing a solicitation.

**(h) Award of contracts; procedures other than competitive ones; exceptions**

(1) An executive agency may not award a contract using procedures other than competitive procedures unless—

(A) except as provided in paragraph (2), a written justification for the use of such procedures has been approved—

(i) 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 procuring activity (without further delegation);

(ii) 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 procuring activity or a delegate who, if a member of the

Armed Forces, is a general or flag officer, or, if a civilian, is serving in a position in grade GS–16 or above under the General Schedule (or in a comparable or higher position under another schedule); or

(iii) 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 414(3) of title 41[5] (without further delegation); and

(B) all other requirements applicable to the use of such 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.

(2) 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 paragraph (1)(A) of this subsection in the same manner as such exceptions apply to the requirements of section 303(f)(1) of such Act or section 2304(f)(1) of such title, as appropriate.

**(i) Availability; complete solicitation package; fees**

An executive agency shall make available to any business concern, or the authorized representative of such concern, the complete solicitation package for any on-going procurement announced pursuant to a notice under subsection (e) of this section. An executive agency may require the payment of a fee, not exceeding the actual cost of duplication, for a copy of such package.

**(j) "Executive agency" defined**

For purposes of this section, the term ''executive agency'' has the meaning provided such term in section 403(1) of title 41.

**(k) Notices of subcontracting opportunities**

**(1) In general**

Notices of subcontracting opportunities may be submitted for publication in the Commerce Business Daily by—

(A) a business concern awarded a contract by an executive agency subject to subsection (e)(1)(C) of this section; and

(B) a business concern that is a subcontractor or supplier (at any tier) to such contractor having a subcontracting opportunity in excess of $10,000.

**(2) Content of notice**

The notice of a subcontracting opportunity shall include—

(A) a description of the business opportunity that is comparable to the description specified in paragraphs (1), (2), (3), and (4) of subsection (f) of this section; and

(B) the due date for receipt of offers.

**(*l*) Management assistance for small businesses affected by military operations**

The Administration shall utilize, as appropriate, its entrepreneurial development and management assistance programs, 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 (as defined in section 636(n)(1) of this title).

**(m) Procurement program for women-owned small business concerns**

**(1) Definitions**

In this subsection, the following definitions apply:

**(A) Contracting officer**

The term ''contracting officer'' has the meaning given such term in section 423(f)(5) of title 41.

**(B) Small business concern owned and controlled by women**

The term ''small business concern owned and controlled by women'' has the meaning given such term in section 632(n) of this title, except that ownership shall be determined without regard to any community property law.

**(2) Authority to restrict competition**

In accordance with this subsection, a contracting officer may restrict competition for any contract for the procurement of goods or services by the Federal Government to small business concerns owned and controlled by women, if—

(A) each of the concerns is not less than 51 percent owned by one or more women who are economically disadvantaged (and such ownership is determined without regard to any community property law);

(B) the contracting officer has a reasonable expectation that two or more small business concerns owned and controlled by women will submit offers for the contract;

(C) the contract is for the procurement of goods or services with respect to an industry identified by the Administrator pursuant to paragraph (3);

(D) the anticipated award price of the contract (including options) does not exceed—

(i) $5,000,000, in the case of a contract assigned an industrial classification code for manufacturing; or

(ii) $3,000,000, in the case of all other contracts;

(E) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price; and

(F) each of the concerns—

(i) 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

(ii) certifies to the contracting officer that it is a small business concern owned and controlled by women and provides adequate documentation, in accordance with standards established by the Administration, to support such certification.

**(3) Waiver**

With respect to a small business concern owned and controlled by women, the Adminis-

[5] See References in Text note below.

trator may waive subparagraph (2)(A) if the Administrator determines that the concern is in an industry in which small business concerns owned and controlled by women are substantially underrepresented.

**(4) 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.

**(5) Enforcement; penalties**

**(A) Verification of eligibility**

In carrying out this subsection, the Administrator shall establish procedures relating to—

(i) the filing, investigation, and disposition by the Administration 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 under paragraph (2)(F)); and

(ii) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under paragraph (2)(F).

**(B) Examinations**

The procedures established under subparagraph (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 paragraph (2)(F).

**(C) Penalties**

In addition to the penalties described in section 645(d) of this title, any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a small business concern owned and controlled by women for purposes of this subsection, shall be subject to—

(i) section 1001 of title 18; and

(ii) sections 3729 through 3733 of title 31.

**(6) Provision of data**

Upon the request of the Administrator, the head of any Federal department or agency shall promptly provide to the Administrator such information as the Administrator determines to be necessary to carry out this subsection.

**(n) Business grants and cooperative agreements**

**(1) In general**

In accordance with this subsection, the Administrator may make grants to and enter into cooperative agreements with any coalition of private entities, public entities, or any combination of private and public entities—

(A) to expand business-to-business relationships between large and small businesses; and

(B) to provide businesses, directly or indirectly, with online information and a database of companies that are interested in mentor-protege programs or community-based, statewide, or local business development programs.

**(2) Matching requirement**

Subject to subparagraph (B), the Administrator may make a grant to a coalition under paragraph (1) only if the coalition provides for activities described in paragraph (1)(A) or (1)(B) an amount, either in kind or in cash, equal to the grant amount.

**(3) Authorization of appropriations**

There is authorized to be appropriated to carry out this subsection $6,600,000, to remain available until expended, for each of fiscal years 2001 through 2006.

(Pub. L. 85–536, §2[8], July 18, 1958, 72 Stat. 389; Pub. L. 87–305, §§7, 8, Sept. 26, 1961, 75 Stat. 667, 668; Pub. L. 88–560, title III, §305(c), Sept. 2, 1964, 78 Stat. 786; Pub. L. 89–754, title X, §1017, Nov. 3, 1966, 80 Stat. 1295; Pub. L. 90–104, title I, §§105–107, Oct. 11, 1967, 81 Stat. 268, 269; Pub. L. 91–375, §6(g), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–89, title V, §501, Aug. 4, 1977, 91 Stat. 561; Pub. L. 95–507, title II, §§202(a), 211, Oct. 24, 1978, 92 Stat. 1761, 1767; Pub. L. 95–510, §101, Oct. 24, 1978, 92 Stat. 1780; Pub. L. 96–302, title I, §118(b), July 2, 1980, 94 Stat. 840; Pub. L. 96–481, title I, §§101, 105, Oct. 21, 1980, 94 Stat. 2321, 2322; Pub. L. 98–47, §§1(a), 2, 3, July 13, 1983, 97 Stat. 243; Pub. L. 98–72, §1(a), Aug. 11, 1983, 97 Stat. 403; Pub. L. 98–362, §5(a), July 16, 1984, 98 Stat. 433; Pub. L. 98–577, title IV, §§401, 402, 404(a), Oct. 30, 1984, 98 Stat. 3079, 3082; Pub. L. 99–272, title XVIII, §18015(b)–(d), Apr. 7, 1986, 100 Stat. 370, 371; Pub. L. 99–500 §101(c) [title X, §§921(b)(2), (c)(1), 922(a), (d)(1)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–147, 1783–151, 1783–152, and Pub. L. 99–591, §101(c) [title X, §§921(b)(2), (c)(1), 922(a), (d)(1)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–147, 3341–151, 3341–152; Pub. L. 99–567, §§1(a), 2, 3, Oct. 27, 1986, 100 Stat. 3188; Pub. L. 99–661, div. A, title IX, formerly title IV, §§921(b)(2), (c)(1), 922(a), (d)(1), Nov. 14, 1986, 100 Stat. 3927, 3930, 3932, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §10(b)(3), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100–533, title II, §§201, 202, Oct. 25, 1988, 102 Stat. 2690, 2692; Pub. L. 100–590, title I, §§127(a), (b), 131(b), Nov. 3, 1988, 102 Stat. 3001, 3003, 3004; Pub. L. 100–656, title II, §§201(b), 207(a), (c), 209, title III, §§303(b)–(e), (g), (h), 304(a), title IV, §§402–404, 407, 409, title V, §501, Nov. 15, 1988, 102 Stat. 3858, 3861, 3863, 3869, 3870, 3872–3874, 3876, 3878, 3880; Pub. L. 101–37, §§6(b), (d), 7(b), 10(c), (e), 12–14, 16, 17, June 15, 1989, 103 Stat. 72–74; Pub. L. 101–162, title V, (3), Nov. 21, 1989, 103 Stat. 1025; Pub. L. 101–510, div. A, title VIII, §806(e)(2), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101–574, title II, §§204(b), 207, 210, 244, Nov. 15, 1990, 104 Stat. 2819–2821, 2827; Pub. L. 102–190, div. A, title VIII, §814(c), Dec. 5, 1991, 105 Stat. 1425; Pub. L. 102–191, §3, Dec. 5, 1991, 105 Stat. 1591; Pub. L. 102–366, title II, §232(a), Sept. 4, 1992, 106 Stat. 1001; Pub. L. 102–564, title III, §§303(a), 304, Oct. 28, 1992, 106 Stat. 4262; Pub. L. 103–355, title I, §1055(b)(2), title IV, §§4202(d), 4404(b), title VII, §7106(b), Oct. 13, 1994, 108 Stat. 3265, 3345, 3349,

3375; Pub. L. 103–403, title IV, §§ 401(a)(1), 407, 415, Oct. 22, 1994, 108 Stat. 4190, 4192, 4198; Pub. L. 104–106, div. D, title XLIII, § 4321(c)(1), (2), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105–85, div. A, title VIII, § 850(e)(1), Nov. 18, 1997, 111 Stat. 1848; Pub. L. 105–135, title IV, §§ 415, 416(a), (c), title VI, § 603(a), title VII, § 708, Dec. 2, 1997, 111 Stat. 2619, 2620, 2631, 2637; Pub. L. 106–50, title III, § 303(a), title V, § 501, Aug. 17, 1999, 113 Stat. 243, 247; Pub. L. 106–398, § 1 [[div. A], title VIII, § 810(c)], Oct. 30, 2000, 114 Stat. 1654, 1654A–209; Pub. L. 106–554, § 1(a)(8) [§ 2], § 1(a)(9) [title V, § 504(a), title VI, § 615(b), title VIII, §§ 803, 807, 809, 811], Dec. 21, 2000, 114 Stat. 2763, 2763A–666, 2763A–695, 2763A–701, 2763A–702, 2763A–706, 2763A–708; Pub. L. 108–447, div. K, title I, §§ 132(b), (c), 141(a), 144, Dec. 8, 2004, 118 Stat. 3453, 3455.)

AMENDMENT OF SECTION

*For termination of amendment by section 132(c) of Pub. L. 108–447, see Termination Date of 2004 Amendment note below.*

REFERENCES IN TEXT

The Small Business Investment Act of 1958, referred to in subsecs. (a)(2)(C), (21)(D), and (b)(13), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of this title. Title IV of the Small Business Investment Act of 1958 is classified generally to subchapter IV–A (§ 692 et seq.) of chapter 14B of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

The Alaska Native Claims Settlement Act, referred to in subsec. (a)(13), is Pub. L. 92–203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

Section 35(a) of title 41, referred to in subsecs. (a)(17)(B)(iii) and (b)(7)(B), was struck out and former section 35(b) of Title 41, Public Contracts, redesignated section 35(a) by Pub. L. 103–355, title VII, § 7201(1), Oct. 13, 1994, 108 Stat. 3378. Section 43b of Title 41 now provides for determination of ''regular dealer'' by Secretary of Labor.

The Walsh-Healey Public Contracts Act, referred to in subsec. (a)(17)(B)(iii), probably means act June 30, 1936, ch. 881, 49 Stat. 2036, as amended, known as the Walsh-Healey Act, which is classified generally to sections 35 to 45 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 35 of Title 41 and Tables. See also section 262 of Title 29, Labor.

The Program Fraud Civil Remedies Act of 1986, referred to in subsec. (a)(18)(C)(iv), is subtitle B of title VI of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1934, as amended, which is classified generally to chapter 38 (§ 3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Federal tort claims provisions in title 28, referred to in subsec. (b)(1)(C)(i), are classified to section 1346(b) and chapter 171 (§ 2671 et seq.) of Title 28, Judiciary and Judicial Procedure.

The Women's Business Ownership Act of 1988, referred to in subsec. (b)(1)(G), is Pub. L. 100–533, Oct. 25, 1988, 102 Stat. 2689, as amended. Title IV of the Act is classified generally to chapter 97 (§ 7101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendments note set out under section 631 of this title and Tables.

Section 110 of the Housing Act of 1949 [42 U.S.C. 1460], referred to in subsec. (b)(14), was omitted from the Code pursuant to section 5316 of Title 42, The Public Health and Welfare, which terminated authority to make grants or loans under title I of that Act [42 U.S.C. 1450 et seq.] after Jan. 1, 1975.

Sections 3 and 8 of the Small Business Act, referred to in subsec. (d)(3)(C), (E)(ii), (G), are classified to sections 632 and 637, respectively, of this title.

The Contract Disputes Act of 1978, referred to in subsec. (d)(4)(F)(ii), is Pub. L. 95–563, Nov. 1, 1978, 92 Stat. 2383, as amended, which is classified principally to chapter 9 (§ 601 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 41 and Tables.

Section 414 of title 41, referred to in subsec. (h)(1)(A)(iii), was amended generally by Pub. L. 108–136, div. A, title XIV, § 1421(a)(1), Nov. 24, 2003, 117 Stat. 1666, and, as so amended, no longer contains a par. (3). See section 414(c)(1) of Title 41, Public Contracts.

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (h)(1)(B), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Title III of the Act is classified generally to subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

In subsec. (a)(2), ''subsections (a), (b), and (e) of section 3131 of title 40'' substituted for ''subsections (a) and (c) of the first section of the Act entitled 'An Act requiring contracts for the construction, alteration, and repair of any public building or public work of the United States to be accompanied by a performance bond protecting the United States and by additional bond for the protection of persons furnishing material and labor for the construction, alteration, or repair of said public buildings or public work,' approved August 24, 1935 (49 Stat. 793)'' on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

PRIOR PROVISIONS

Prior similar provisions were contained in sections 207(b)(2), (b)(4), 208, 210, 212 and 216 of act July 30, 1953, ch. 282, title II, 67 Stat. 235–239, as amended by acts Aug. 9, 1955, ch. 628, §§ 2, 5, 7, 69 Stat. 547, 550; Feb. 2, 1956, ch. 29, §§ 2, 3, 70 Stat. 10, which were previously classified to this section and sections 636, 639, 641, and 645 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2004—Subsec. (b)(1)(A). Pub. L. 108–447, § 132(b), (c), temporarily struck out cl. (ii), substituted ''to provide technical, managerial, and informational aids to small business concerns—'' for ''to provide—

''(i) technical, managerial, and informational aids to small business concerns—'',

redesignated subcls. (I) to (IV) of former cl. (i) as cls. (i) to (iv), respectively, substituted a period for ''; and'' at end of cl. (iv), and redesignated items (aa) and (bb) of former subcl. (II) as subcls. (I) and (II), respectively. Prior to amendment, cl. (ii) read as follows: ''through cooperation with a profit-making concern (referred to in this paragraph as a 'cosponsor'), training, information, and education to small business concerns, except that the Administration shall—

''(I) take such actions as it determines to be appropriate to ensure that—

''(aa) the Administration receives appropriate recognition and publicity;

''(bb) the cooperation does not constitute or imply an endorsement by the Administration of any product or service of the cosponsor;

''(cc) unnecessary promotion of the products or services of the cosponsor is avoided; and

''(dd) utilization of any one cosponsor in a marketing area is minimized; and

''(II) develop an agreement, executed on behalf of the Administration by an employee of the Administration in Washington, the District of Columbia, that provides, at a minimum, that—

''(aa) any printed material to announce the cosponsorship or to be distributed at the cosponsored activity, shall be approved in advance by the Administration;

''(bb) the terms and conditions of the cooperation shall be specified;

''(cc) only minimal charges may be imposed on any small business concern to cover the direct costs of providing the assistance;

''(dd) the Administration may provide to the cosponsorship mailing labels, but not lists of names and addresses of small business concerns compiled by the Administration;

''(ee) 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 Administration of any product or service of the cosponsor; and

''(ff) the Administration shall ensure that it receives appropriate recognition in all cosponsorship printed materials.''

See Termination Date of 2004 Amendment note below.

Subsec. (b)(1)(B). Pub. L. 108–447, §141(a), substituted ''purposes of subparagraph (A). To facilitate'' for ''purposes of subparagraph (A); and to facilitate'', ''shall maintain at its headquarters and pay the salaries, benefits, and expenses of a volunteer and professional staff to manage and oversee the program. Any'' for ''may maintain at its headquarters and pay the expenses of a team of volunteers subject to such conditions and limitations as the Administration deems appropriate: *Provided*, That any'', and ''and the management of the contributions received.'' for period at end.

Subsec. (b)(17). Pub. L. 108–447, §144, inserted before period at end '', veterans, and members of a reserve component of the Armed Forces''.

2000—Subsec. (a)(15)(A). Pub. L. 106–554, §1(a)(9) [title VIII, §807], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''is a not-for-profit organization chartered by the State of Hawaii,''.

Subsec. (b)(1)(A). Pub. L. 106–554, §1(a)(9) [title V, §504(a)], amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''to provide technical and managerial aids to small-business concerns, by advising and counseling on matters in connection with Government procurement and property disposal and on policies, principles, and practices of good management, including but not limited to cost accounting, methods of financing, business insurance, accident control, wage incentives, computer security, and methods engineering, by cooperating and advising with voluntary business, professional, educational, and other nonprofit organizations, associations, and institutions and with other Federal and State agencies, by maintaining a clearinghouse for information concerning the managing, financing, and operation of small-business enterprises, including information on the benefits and risks of franchising, by disseminating such information, and by such other activities as are deemed appropriate by the Administration; and In the case of cosponsored activities which include the participation of a Federal, State, or local public official or agency, the Administration shall take such actions as it deems necessary to ensure that the cooperation does not constitute or imply an endorsement by the Administration of or give undue recognition to the public official or agency, and the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official.''

Subsec. (b)(1)(B). Pub. L. 106–554, §1(a)(9) [title VIII, §809], inserted at end ''Notwithstanding any other provision of law, SCORE may solicit cash and in-kind contributions from the private sector to be used to carry out its functions under this chapter, and may use payments made by the Administration pursuant to this subparagraph for such solicitation.''

Subsec. (d)(1). Pub. L. 106–554, §1(a)(9) [title VIII, §803(1)], inserted ''small business concerns owned and controlled by veterans,'' after ''small business concerns,'' the first place appearing in the first and second sentences.

Subsec. (d)(3)(A). Pub. L. 106–554, §1(a)(9) [title VIII, §803(2)(A)], inserted ''small business concerns owned and controlled by service-disabled veterans,'' after ''small business concerns owned and controlled by veterans,'' in two places.

Subsec. (d)(3)(F). Pub. L. 106–554, §1(a)(9) [title VIII, §803(2)(B)], inserted ''small business concern owned and controlled by service-disabled veterans,'' after ''small business concern owned and controlled by veterans,''.

Subsec. (d)(4)(D). Pub. L. 106–554, §1(a)(9) [title VIII, §803(3)], inserted ''small business concerns owned and controlled by service-disabled veterans,'' after ''small business concerns owned and controlled by veterans,''.

Pub. L. 106–554, §1(a)(9) [title VI, §615(b)], inserted ''qualified HUBZone small business concerns,'' after ''small business concerns,''.

Subsec. (d)(4)(E), (6)(A), (C), (F), (10)(B). Pub. L. 106–554, §1(a)(9) [title VIII, §803(3)], inserted ''small business concerns owned and controlled by service-disabled veterans,'' after ''small business concerns owned and controlled by veterans,''.

Subsec. (e)(1)(A). Pub. L. 106–398, §1 [[div. A], title VIII, §810(c)(1)], substituted ''publish'' for ''furnish for publication by the Secretary of Commerce'' in concluding provisions.

Subsec. (e)(2). Pub. L. 106–398, §1 [[div. A], title VIII, §810(c)(2)], added par. (2) and struck out former par. (2) which read as follows: ''The Secretary of Commerce shall publish promptly in the Commerce Business Daily each notice required by paragraph (1).''

Subsec. (e)(3). Pub. L. 106–398, §1 [[div. A], title VIII, §810(c)(3)], substituted ''publish a notice of solicitation'' for ''furnish a notice to the Secretary of Commerce'' in introductory provisions and struck out ''by the Secretary of Commerce'' after ''notice is published'' in subpar. (A).

Subsec. (m). Pub. L. 106–554, §1(a)(9) [title VIII, §811], added subsec. (m).

Subsec. (n). Pub. L. 106–554, §1(a)(8) [§2], added subsec. (n).

1999—Subsec. (d)(1). Pub. L. 106–50, §501(a), inserted ''small business concerns owned and controlled by service-disabled veterans,'' after ''small business concerns,'' in two places.

Subsec. (d)(3)(A). Pub. L. 106–50, §501(b)(1), inserted ''small business concerns owned and controlled by veterans,'' after ''small business concerns,'' in two places.

Subsec. (d)(3)(E). Pub. L. 106–50, §501(b)(2), added subpar. (E). Former subpar. (E) redesignated (F).

Subsec. (d)(3)(F). Pub. L. 106–50, §501(b)(2), (3), redesignated subpar. (E) as (F) and inserted ''small business concern owned and controlled by veterans,'' after ''small business concern,''. Former subpar. (F) redesignated (G).

Subsec. (d)(3)(G). Pub. L. 106–50, §501(b)(2), redesignated subpar. (F) as (G).

Subsec. (d)(4)(D), (E), (6)(A), (C), (F), (10)(B). Pub. L. 106–50, §501(c), inserted ''small business concerns owned and controlled by veterans,'' after ''small business concerns,'' the first place appearing.

Subsec. (*l*). Pub. L. 106–50, §303(a), added subsec. (*l*).

1997—Subsec. (b)(16). Pub. L. 105–135, §708(3), struck out the par. (16) added by Pub. L. 100–590, §127(b). See 1988 Amendment note below.

Subsec. (b)(17). Pub. L. 105–135, §708, added par. (17).

Subsec. (d)(1). Pub. L. 105–135, §603(a)(1)(B), inserted ''qualified HUBZone small business concerns,'' after ''small business concerns,'' in second sentence.

Pub. L. 105–135, §603(a)(1)(A), which directed substitution of '', qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals''

for ‘‘,, small business concerns owned and controlled by socially and economically disadvantaged individuals’’ in first sentence, was executed by making the substitution for ‘‘, small business concerns owned and controlled by socially and economically disadvantaged individuals’’ to reflect the probable intent of Congress and the amendment by Pub. L. 104–106, § 4321(c)(1)(A). See 1996 Amendment note below.

Subsec. (d)(3)(A). Pub. L. 105–135, § 603(a)(2)(A), inserted ‘‘qualified HUBZone small business concerns,’’ after ‘‘small business concerns,’’ in two places.

Subsec. (d)(3)(F). Pub. L. 105–135, § 603(a)(2)(B), added subpar. (F).

Subsec. (d)(4)(E). Pub. L. 105–135, § 603(a)(3), substituted ‘‘small business concerns, qualified HUBZone small business concerns, and’’ for ‘‘small business concerns and’’ after ‘‘opportunities for’’.

Subsec. (d)(4)(G). Pub. L. 105–135, § 415, added subpar. (G).

Subsec. (d)(6). Pub. L. 105–135, § 603(a)(4), inserted ‘‘qualified HUBZone small business concerns,’’ after ‘‘small business concerns,’’ wherever appearing.

Subsec. (d)(10)(B). Pub. L. 105–135, § 603(a)(5), inserted ‘‘qualified HUBZone small business concerns,’’ after ‘‘small business concerns,’’.

Subsec. (e)(1)(C). Pub. L. 105–135, § 416(c), substituted ‘‘$100,000’’ for ‘‘$25,000’’ in two places.

Subsec. (g)(1). Pub. L. 105–85 added subpar. (A), redesignated subpars. (C) to (H) as (B) to (G), respectively, and struck out former subpars. (A) and (B) which read as follows:

‘‘(A) the proposed procurement is for an amount not greater than the simplified acquisition threshold and is to be made through a system with interim FACNET capability certified pursuant to section 426a(a)(1) of title 41 or with full FACNET capability certified pursuant to section 426a(a)(2) of title 41;

‘‘(B)(i) the proposed procurement is for an amount not greater than $250,000 and is to be made through a system with full FACNET capability certified pursuant to section 426a(a)(2) of title 41; and

‘‘(ii) a certification has been made pursuant to section 426a(b) title 41 that Government-wide FACNET capability has been implemented;’’.

Subsec. (k). Pub. L. 105–135, § 416(a), added subsec. (k).

1996—Subsec. (d)(1). Pub. L. 104–106, § 4321(c)(1)(A), substituted ‘‘that small business concerns,’’ for ‘‘that small business concerns,,’’.

Subsec. (d)(6)(C). Pub. L. 104–106, § 4321(c)(1)(B), substituted ‘‘, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women’’ for ‘‘and small business concerns owned and controlled by the socially and economically disadvantaged individuals’’.

Subsec. (f)(5). Pub. L. 104–106, § 4321(c)(2), inserted ‘‘and’’ at end.

1994—Subsec. (b)(1)(A). Pub. L. 103–403, § 407, inserted ‘‘including information on the benefits and risks of franchising,’’ after ‘‘small-business enterprises,’’ in first sentence.

Pub. L. 103–403, § 401(a)(1), repealed amendments made by Pub. L. 98–362, § 5(a), effective Sept. 30, 2003. Amendment by Pub. L. 98–362, § 5(a)(2), previously repealed effective Oct. 1, 1994, by section 7(b) of Pub. L. 98–362, as amended. See Effective and Termination Dates of 1984 Amendments notes below.

Subsec. (b)(1)(G). Pub. L. 103–403, § 415, substituted ‘‘this chapter and to carry out the activities authorized by title IV of the Women’s Business Ownership Act of 1988’’ for ‘‘this paragraph’’.

Subsec. (d)(1). Pub. L. 103–355, § 7106(b)(1), substituted ‘‘, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women’’ for ‘‘and small business concerns owned and controlled by socially and economically disadvantaged individuals’’ in two places.

Subsec. (d)(2)(A). Pub. L. 103–355, § 4404(b), substituted ‘‘simplified acquisition threshold’’ for ‘‘small purchase threshold’’.

Subsec. (d)(3)(A). Pub. L. 103–355, § 7106(b)(1), substituted ‘‘, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women’’ for ‘‘and small business concerns owned and controlled by socially and economically disadvantaged individuals’’ in two places.

Subsec. (d)(3)(D), (E). Pub. L. 103–355, § 7106(b)(2), (3), added subpars. (D) and (E) and struck out former subpar. (D) which read as follows: ‘‘‘Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as either a small business concern or a small business concern owned and controlled by socially and economically disadvantaged individuals.’’’

Subsec. (d)(4)(D). Pub. L. 103–355, § 7106(b)(1), substituted ‘‘, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women’’ for ‘‘and small business concerns owned and controlled by socially and economically disadvantaged individuals’’.

Subsec. (d)(4)(E). Pub. L. 103–355, § 7106(b)(4), inserted ‘‘and for small business concerns owned and controlled by women’’ after ‘‘(3) of this subsection’’.

Subsec. (d)(6)(A). Pub. L. 103–355, § 7106(b)(1), substituted ‘‘, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women’’ for ‘‘and small business concerns owned and controlled by socially and economically disadvantaged individuals’’.

Subsec. (d)(6)(C). Pub. L. 103–355, § 7106(b)(1), which directed that subpar. (C) be amended by substituting ‘‘, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women’’ for ‘‘and small business concerns owned and controlled by socially and economically disadvantaged individuals’’, could not be executed because the words ‘‘and small business concerns owned and controlled by socially and economically disadvantaged individuals’’ did not appear in subpar. (C).

Subsec. (d)(6)(F), (10)(B). Pub. L. 103–355, § 7106(b)(1), substituted ‘‘, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women’’ for ‘‘and small business concerns owned and controlled by socially and economically disadvantaged individuals’’.

Subsec. (e)(1). Pub. L. 103–355, § 4202(d)(1)(A), substituted ‘‘$25,000’’ for ‘‘the small purchase threshold’’ wherever appearing.

Subsec. (e)(3)(B). Pub. L. 103–355, § 4202(d)(1)(B), inserted ‘‘in the case of a contract or order estimated to be greater than the simplified acquisition threshold,’’ after ‘‘(B)’’.

Subsec. (f)(6). Pub. L. 103–355, § 4202(d)(2), added par. (6).

Subsec. (g)(1)(A) to (E). Pub. L. 103–355, § 4202(d)(3)(A), (B), added subpars. (A) and (B) and redesignated former subpars. (A) to (C) as (C) to (E), respectively. Former subpars. (D) and (E) redesignated (F) and (G), respectively.

Subsec. (g)(1)(F). Pub. L. 103–355, § 4202(d)(3)(A), redesignated subpar. (D) as (F). Former subpar. (F) redesignated (H).

Pub. L. 103–355, § 1055(b)(2), added subpar. (F).

Subsec. (g)(1)(G), (H). Pub. L. 103–355, § 4202(d)(3)(A), redesignated subpars. (E) and (F) as (G) and (H), respectively.

1992—Subsec. (a). Pub. L. 102–366, § 232(a)(1)–(5), substituted semicolon for period at end of par. (1)(B), ‘‘; and’’ for period at end of par. (1)(C), ‘‘to subparagraph (A)’’ for ‘‘to (A)’’ in par. (6)(C)(i), ‘‘636(j)(10)(G)’’ for ‘‘636(j)(10)(H)’’ in par. (6)(C)(ii), and ‘‘to subparagraph (D)’’ for ‘‘to (D)’’ in par. (12)(E).

Subsec. (b)(1)(E) to (G). Pub. L. 102–564, § 304, added subpar. (E) and redesignated former subpars. (E) and (F) as (F) and (G), respectively.

Subsec. (c). Pub. L. 102–366, §232(a)(7), designated subsec. (c) as reserved. Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 102–366, §232(a)(6), (8), redesignated subsec. (c) as (d) and substituted ''imposition'' for ''impositon'' in par. (4)(F)(ii). Former subsec. (d) redesignated (e).

Subsec. (d)(11), (12). Pub. L. 102–564, §303(a), redesignated par. (12) as (11) and struck out former par. (11) which read as follows: ''At the conclusion of each fiscal year, the Administration shall submit to the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives a report on subcontracting plans found acceptable by any Federal agency which the Administration determines do not contain maximum practicable opportunities for small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to participate in the performance of contracts described in this subsection.''

Subsecs. (e) to (g). Pub. L. 102–366, §232(a)(6), redesignated subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 102–366, §232(a)(6), (9), redesignated subsec. (g) as (h) and substituted ''Administrative'' for ''Administration'' in par. (2). Former subsec. (h) redesignated (i).

Subsecs. (i), (j). Pub. L. 102–366, §232(a)(6), redesignated subsecs. (h) and (i) as (i) and (j), respectively.

1991—Subsec. (c). Pub. L. 102–191 redesignated subsec. (d) as (c) and struck out former subsec. (c) which related to management and technical assistance for small businesses owned by women. See section 656 of this title.

Subsec. (d). Pub. L. 102–191 redesignated subsec. (e) as (d). Former subsec. (d) redesignated (c).

Subsec. (d)(12). Pub. L. 102–190 added par. (12).

Subsecs. (e) to (j). Pub. L. 102–191, which directed the redesignation of subsecs. (e) to (j) as (d) to (k), was executed by redesignating subsecs. (e) to (j) as (d) to (i), respectively, to reflect the probable intent of Congress.

1990—Subsec. (a)(1). Pub. L. 101–574, §207(2), struck out after subpar. (C) ''No contract may be entered into under subparagraph (B) after September 30, 1988.''

Subsec. (a)(1)(B). Pub. L. 101–574, §207(1), (3), redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: ''to enter into contracts with such agency as shall be designated by the President, to furnish articles, equipment, supplies, services, or materials, or to perform construction work for such agency. In any case in which the Administration certifies to any officer of such agency having procurement powers that the Administration is competent and responsible to perform any specific procurement contract to be let by any such officer, such officer shall let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. If the Administration and such procurement officer fail to agree on such terms and conditions, either the Administration or such officer shall promptly notify, in writing, the head of such agency. The head of such agency shall have five days (exclusive of Saturdays, Sundays, and legal holidays) to establish the terms and conditions upon which such procurement contract may be let to the Administration, and shall communicate in writing to the Administration the terms and conditions so established. Within five days (exclusive of Saturdays, Sundays, and legal holidays) after the receipt of such written communication, the Administration shall decide whether to perform such procurement contract or withdraw its prior certification that the Administration is competent and responsible to perform such contract; and''.

Subsec. (a)(1)(C). Pub. L. 101–574, §207(4), added subpar. (C). Former subpar. (C) redesignated (B).

Subsec. (a)(4)(A)(i)(II), (ii)(II). Pub. L. 101–574, §204(b), inserted ''(or a wholly owned business entity of such tribe)'' after ''tribe''.

Subsec. (a)(17)(B)(iv). Pub. L. 101–574, §210, amended cl. (iv) generally. Prior to amendment, cl. (iv) read as follows: ''represent that it will supply the product of a domestic small business manufacturer or processor, except that, the Administrator may waive the application of the clause, as it pertains to the furnishing of a product manufactured or processed by a small business, for any class of products for which there are no small business manufacturers or processors in the Federal market.''

Subsec. (d)(2)(A). Pub. L. 101–510, §806(e)(2)(A), substituted ''the small purchase threshold'' for ''$10,000''.

Subsec. (e)(1)(A). Pub. L. 101–510, §806(e)(2)(B), inserted ''or'' at end of subcl. (i), substituted a comma for ''; or'' at end of subcl. (ii), substituted ''the small purchase threshold'' for ''$25,000'' in subcls. (i) and (ii), and struck out subcl. (iii) which read as follows: ''solicit bids or proposals for a contract for property or services for a price expected to exceed $10,000, if there is not a reasonable expectation that at least two offers will be received from responsive and responsible offerors,''.

Subsec. (e)(1)(B), (C). Pub. L. 101–510, §806(e)(2)(B)(i), substituted ''the small purchase threshold'' for ''$25,000'' wherever appearing.

Subsec. (g)(1). Pub. L. 101–574, §244, substituted ''subsection (e)(1)'' for ''subsection (a)(1)''.

1989—Subsec. (a)(1)(D)(i). Pub. L. 101–37, §10(c), substituted ''Program Participants'' for ''program participants''.

Subsec. (a)(4)(A)(i). Pub. L. 101–37, §6(d)(1), inserted ''unconditionally'' after ''per centum''.

Subsec. (a)(4)(A)(ii). Pub. L. 101–37, §6(d)(2), inserted ''unconditionally'' after ''which is''.

Subsec. (a)(6)(C). Pub. L. 101–37, §7(b), which directed substitution of ''636(j)(10)(G)'' for ''636(j)(10)(H)'' in cl. (iii), could not be executed because there was no cl. (iii). See 1992 Amendment note above.

Subsec. (a)(9). Pub. L. 101–37, §17, substituted ''Administration'' for ''Administrator'' in subpar. (A), ''section 636(j)(10)(G) of this title'' for ''section 636(j)(10)(H) of this title'' in subpar. (B)(iii), and ''Administration's'' for ''Administrator's'' in subpar. (C).

Subsec. (a)(15). Pub. L. 101–37, §6(b), substituted ''Organization'' for ''organizations''.

Subsec. (a)(17)(B)(ii) to (iv). Pub. L. 101–37, §10(e), added cl. (ii) and redesignated former cls. (ii) and (iii) as (iii) and (iv), respectively.

Subsec. (a)(18)(A). Pub. L. 101–37, §12, struck out ''certified'' before ''during such person's term''.

Subsec. (a)(19)(B). Pub. L. 101–37, §13, struck out '', imposed by the Administrator,'' after ''disciplinary action''.

Subsec. (a)(20)(A). Pub. L. 101–37, §14, substituted ''Business Opportunity Specialist'' for ''business opportunity specialist''.

Subsec. (a)(21). Pub. L. 101–37, §16, in subpar. (B) struck out discretionary authority of the Administrator and preconditions respecting request prior to relinquishment of ownership or control in introductory provisions, added subpar. (C), and redesignated former subpars. (C) and (D) as (D) and (E), respectively.

Subsec. (b)(1)(A). Pub. L. 101–162 amended last sentence generally, substituting ''the Administration shall ensure that it receives appropriate recognition in all cosponsored printed materials, whether the participant is a profit making concern or a governmental agency or public official'' for ''that the Administration is given primary recognition in all cosponsored printed materials, whether the participant is a profit-making concern or a governmental agency or official''.

1988—Subsec. (a)(1)(A). Pub. L. 100–656, §303(d), inserted provisions authorizing Administration appeal from procurement officer's adverse decisions and providing for decision by the Secretary or agency head on the appeal.

Subsec. (a)(1)(D). Pub. L. 100–656, §303(b), added subpar. (D).

Subsec. (a)(3). Pub. L. 100–656, §303(e), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''Any small business concern selected by the Administration to perform any Federal Government procurement contract to be let pursuant to this subsection

shall, when practicable, participate in any negotiation of the terms and conditions of such contract.''

Subsec. (a)(4). Pub. L. 100–656, § 207(c), amended par. (4) generally, in subpar. (A)(i) adding subcl. (III), in subpar. (A)(ii) adding subcl. (III), and in subpar. (B) adding cl. (iii).

Subsec. (a)(4)(C). Pub. L. 100–656, § 209(b), added subpar. (C).

Subsec. (a)(6). Pub. L. 100–656, § 209(a), designated existing provisions as subpar. (A) and added subpars. (B) to (E).

Subsec. (a)(7). Pub. L. 100–656, § 303(g), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(9). Pub. L. 100–656, § 409, amended par. (9) generally. Prior to amendment, par. (9) read as follows: ''Within ninety days after the effective date of this paragraph, the Administration shall publish in the Federal Register rules setting forth those conditions or circumstances pursuant to which a firm previously deemed eligible by the Administration may be denied assistance under the provisions of this subsection: *Provided*, That no such firm shall be denied total participation in any program conducted under the authority of this subsection without first being afforded a hearing on the record in accordance with chapter 5 of title 5.''

Subsec. (a)(10). Pub. L. 100–656, § 201(b), inserted sentence at end requiring such program to make a sustained and substantial effort to solicit applications for certification from small business concerns located in areas of concentrated unemployment or underemployment.

Subsec. (a)(12). Pub. L. 100–656, § 501, amended par. (12) generally. Prior to amendment, par. (12) read as follows: ''To the maximum extent practicable the Associate Administrator for Minority Small Business and Capital Ownership Development shall submit, no less frequently than annually, a yearly estimate of the dollar amounts and types of contracts required for the efficient use of any program conducted under the authority of this subsection, to each agency which may participate in such program.''

Subsec. (a)(15). Pub. L. 100–656, § 207(a), added par. (15).

Subsec. (a)(16). Pub. L. 100–656, § 303(c), added par. (16).

Subsec. (a)(17). Pub. L. 100–656, § 303(h), added par. (17).

Subsec. (a)(18). Pub. L. 100–656, § 402, added par. (18).

Subsec. (a)(19). Pub. L. 100–656, § 403, added par. (19).

Subsec. (a)(20). Pub. L. 100–656, § 404, added par. (20).

Subsec. (a)(21). Pub. L. 100–656, § 407, added par. (21).

Subsec. (b)(1)(A). Pub. L. 100–590, § 131(b), inserted ''that any Administration program participating in such cosponsored activities receives appropriate recognition and publicity, and'' in provisions preceding cl. (i), inserted '', executed on behalf of the agency by an employee of the agency in Washington, District of Columbia, and who shall also approve, in advance, any printed materials to be distributed at the conference,'' in cl. (1), and inserted provisions at end which authorized Administration, in case of cosponsored activities, to ensure that cooperation does not constitute endorsement or give undue recognition to public official or agency, and that Administration is given primary recognition in all cosponsored printed materials.

Subsec. (b)(16). Pub. L. 100–533, § 202, and Pub. L. 100–590, § 127(b), made identical amendments adding par. (16).

Subsec. (c). Pub. L. 100–590, § 127(a), amended subsec. (c) generally, inserting provisions substantially identical to provisions contained in prior general amendment by Pub. L. 100–533, § 201.

Pub. L. 100–533, § 201, amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''The Administration shall from time to time make studies of matters materially affecting the competitive strength of small business, and of the effect on small business of Federal laws, programs, and regulations, and shall make recommendations to the appropriate Federal agency or agencies for the adjustment of such programs and regulations to the needs of small business.''

Subsec. (d)(4)(F). Pub. L. 100–656, § 304(a), added subpar. (F).

1987—Subsec. (a)(14)(B), (C). Pub. L. 100–26, § 10(b)(3), substituted ''section 644(*o*)'' for ''section 644(n)''.

1986—Subsec. (a)(1). Pub. L. 99–567, § 2, substituted provision that no contract may be entered into under subpar. (B) after Sept. 30, 1988, for provision that no such contract could be entered into prior to Oct. 1, 1983, nor after Sept. 30, 1985, in closing provisions.

Subsec. (a)(1)(A). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 921(b)(2)], Pub. L. 99–661, § 921(b)(2), amended subpar. (A) identically, inserting provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

Subsec. (a)(1)(B). Pub. L. 99–567, § 1(a), struck out ''(other than the Department of Defense or any component thereof)'' after ''contracts with such agency''.

Subsec. (a)(2). Pub. L. 99–567, § 3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised after Sept. 30, 1988, for provision that such authority could not be exercised prior to Oct. 1, 1983, nor after Sept. 30, 1985, in closing provisions.

Subsec. (a)(4). Pub. L. 99–272, § 18015(b), in amending par. (4) generally, included economically disadvantaged Indian tribe within definition of ''socially and economically disadvantaged small business concern''.

Subsec. (a)(6). Pub. L. 99–272, § 18015(c), inserted provision enumerating factors to be considered by the Administration in determining the economic disadvantage of an Indian tribe.

Subsec. (a)(13). Pub. L. 99–272, § 18015(d), added par. (13).

Subsec. (a)(14). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 921(c)(1)], Pub. L. 99–661, § 921(c)(1), amended subsec. (a) identically, adding par. (14).

Subsec. (e)(1). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 921(a)], Pub. L. 99–661, § 921(a), amended par. (1) identically, in subpar. (A) substituting ''$25,000'' for ''$10,000'' in cls. (i) and (ii), adding cl. (iii), and in provision following cl. (iii) substituting ''subsection (f) of this section'' for ''subsection (b) of this section'', adding subpar. (B), and redesignating former subpar. (B) as (C).

Subsec. (f). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 922(d)], Pub. L. 99–661, § 922(d), amended subsec. (f) identically, substituting ''subparagraph (A) or (B) of subsection (e)(1) of this section'' for ''subsection (e)(1)(A) of this section'' in provisions preceding par. (1).

1984—Subsec. (b)(1)(A). Pub. L. 98–362, § 5(a)(2), which inserted provisions at end of subpar. (A) relating to providing of assistance through cooperation of cosponsors, and provisions respecting activities of the Administration related to furnishing of assistance by cosponsors, was repealed effective Oct. 1, 1994, by Pub. L. 98–362, § 7(b), as amended, and effective Sept. 30, 2003, by Pub. L. 103–403, § 401(a), as amended. See Effective and Termination Dates of 1984 Amendments notes below.

Pub. L. 98–362, § 5(a)(1), which inserted ''computer security,'' after ''wage incentives,'', was repealed effective Sept. 30, 2003, by Pub. L. 103–403, § 401(a), as amended. See Effective and Termination Dates of 1984 Amendments note below.

Subsec. (b)(7)(C). Pub. L. 98–577, § 401, inserted ''Notwithstanding the first sentence of this subparagraph, the Administration may not establish an exemption from referral or notification or refuse to accept a referral or notification from a Government procurement officer made pursuant to subparagraph (A) or (B) of this paragraph, but nothing in this paragraph shall require the processing of an application for certification if the small business concern to which the referral pertains declines to have the application processed.''

Subsec. (d)(1). Pub. L. 98–577, § 402(a), inserted '', 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 small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals''.

Subsec. (d)(3)(A). Pub. L. 98–577, §402(b), inserted '', 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 small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals''.

Subsec. (e). Pub. L. 98–577, §404(a), added subsec. (e). Former subsec. (e), which related to notice and publication of procurement actions, exceptions, departmental procedures, contents of notice, sole source contracts and unsolicited proposals, was struck out.

Subsecs. (f) to (j). Pub. L. 98–577 added subsecs. (f) to (j).

1983—Subsec. (a)(1). Pub. L. 98–47, §2, substituted provision that no contract may be entered into under subpar. (B) prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that such contracts may not be entered into after Sept. 30, 1981.

Subsec. (a)(1)(B). Pub. L. 98–47, §1(a), substituted ''(other than the Department of Defense or any component thereof) as shall be designated by the President'' for '', as shall be designated by the President within 60 days after the effective date of this paragraph''.

Subsec. (a)(2). Pub. L. 98–47, §3, substituted provision that the authority to waive bonds as provided in par. (2) may not be exercised prior to Oct. 1, 1983, nor after Sept. 30, 1985, for provision that par. (2) shall not apply after Sept. 30, 1981.

Subsec. (e). Pub. L. 98–72 amended subsec. (e) generally, designating existing provisions as par. (1) and in par. (1) as so designated substituting: ''It shall be the duty of the Secretary of Commerce, and the Secretary is hereby empowered, to obtain notice of all proposed competitive and noncompetitive civilian and defense procurement actions of $10,000 and above from any Federal department, establishment or agency (hereinafter in this subsection referred to as 'department') engaged in procurement of property, supplies, and services in the United States; and to publicize such notices in the daily publication Commerce Business Daily, immediately after the necessity for the procurement is established: *Provided*, That nothing in this paragraph shall require publication of such notices with respect to those procurements in which it is determined on a case-by-case basis that (A) the procurement for security reasons is of a classified nature; (B) the Federal department's need for the property, supplies, or services is of such unusual and compelling urgency that the Government would be seriously injured if the time periods provided for in paragraph (2) were complied with; (C) a foreign government reimburses the Federal department for the cost of the procurement of the property, supplies, or services for such government and only one source is available, or the terms of an international agreement or treaty between the United States and a foreign government authorize or require that all such procurement shall be from sources specified within such international agreement or treaty; (D) the procurement is made from another Government department or agency, or a mandatory source of supply; (E) the procurement is for utility services and only one source is available; (F) the procurement is made against an order placed under a requirement or similar contract, including orders for perishable subsistence supplies; (G) the procurement results from acceptance of a proposal pursuant to the Small Business Innovation Development Act of 1982 or an unsolicited proposal that demonstrates a unique or innovative research concept and publication of such unsolicited proposal would improperly disclose the originality of thought or innovativeness of the proposed research; or (H) it is determined in writing by the head of the Federal department, with the concurrence of the Administrator, that advance notice is not appropriate or reasonable'' for ''It shall be the duty of the Secretary of Commerce, and he is empowered, to obtain notice of all proposed defense procurement actions of $10,000 and above, and all civilian procurement actions of $5,000 and above, from any Federal department, establishment, or agency engaged in procurement of supplies and services in the United States; and to publicize such notices in the daily publication 'United States Department of Commerce Synopsis of the United States Government Proposed Procurements, Sales, and Contract Awards', immediately after the necessity for the procurement is established; except that nothing herein shall require publication of such notices with respect to those procurements (1) which for security reasons are of a classified nature, or (2) which involve perishable subsistence supplies, or (3) which are for utility services and the procuring agency in accordance with applicable law has predetermined the utility concern to whom the award will be made, or (4) which are of such unusual and compelling emergency that the Government would be seriously injured if bids or offers were permitted to be made more than 15 days after the issuance of the invitation for bids or solicitation for proposals, or (5) which are made by an order placed under an existing contract, or (6) which are made from another Government department or agency, or a mandatory source of supply, or (7) which are for personal or professional services, or (8) which are for services from educational institutions, or (9) in which only foreign sources are to be solicited, or (10) for which it is determined in writing by the procuring agency, with the concurrence of the Administrator, that advance publicity is not appropriate or reasonable'', and adding pars. (2) to (6).

1980—Subsec. (a)(1), (2). Pub. L. 96–481, §101, substituted ''September 30, 1981'' for ''September 30, 1980''.

Subsec. (a)(8). Pub. L. 96–481, §105, substituted provisions that all determinations may pursuant to par. (5) 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 and that all other determinations made pursuant to (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to the Administrator, for provision that all determinations made pursuant to pars. (4), (5), (6) and (7), shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development.

Subsec. (d)(3)(C). Pub. L. 96–302 included in the presumption of being disadvantaged individuals Asian Pacific Americans.

1978—Subsec. (a). Pub. L. 95–507, §202(a), redesignated pars. (1) and (2) as (1)(A) and (C) and as redesignated inserted provision giving the Administration sole discretion in choosing procurement requirements from agencies or departments for use in the program, provided that the terms and conditions of the proposed contract are to be negotiated, made provision for the submission of stalemated matters for resolution, and added pars. (1)(B) and (2) to (12).

Subsec. (b)(1). Pub. L. 95–510 substituted in subpar. (B) provisions relating to the establishment and implementation of volunteer programs for provisions relating to the use of office facilities etc., and the payment of transportation expenses and per diem allowances and added subpars. (C) to (F).

Subsec. (d). Pub. L. 95–507, §211, substituted provisions relating to the performance of contracts by small business concerns, requiring, among other things, the inclusion of a specific contract clause in most Federal prime contracts, requiring as a condition of the solicitation of any offer of a Federal contract in excess of $500,000, the submission of a summary contract plan, and relating to incentives for small business subcontracting, contract eligibility, breach of contract or

subcontract, administrative review of contract solicitation and subcontract planning, and relating to submission to congressional committees of a report on subcontracting plans for provisions relating generally to the small business subcontract program and regulations issued thereunder.

1977—Subsec. (b)(7). Pub. L. 95–89, in revising par. (7), incorporated existing introductory text in provisions designated subpar. (A) and substituted ''with respect to all elements of responsibility, including, but not limited to, capability, competency, capacity, credit, integrity, perseverance, and tenacity, of any small business concern or group of such concerns to receive and perform a specific Government contract'' for ''with respect to the competency, as to capacity and credit, of any small-business concern or group of such concerns to perform a specific Government contract''; added subpar. (B); and incorporated existing end text in provisions designated subpar. (C), substituting therein ''certified by the Administration pursuant to (A) or (B) to be a responsible or eligible Government contractor as to a specific Government contract'' for ''certified by or under the authority of the Administration to be a competent Government contractor with respect to capacity and credit as to a specific Government contract'' and ''shall let'' and ''other requirement of responsibility or eligibility'' for ''are authorized to let'' and ''other requirement with respect to capacity and credit''.

1970—Subsec. (b)(15). Pub. L. 91–375 substituted ''section 3204 of title 39'' for ''section 4154 of title 39''.

1967—Subsec. (b)(1)(B). Pub. L. 90–104, § 105, designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (b)(13). Pub. L. 90–104, § 106, substituted ''advisory boards and committees'' for ''small business advisory boards and committees truly representative of small business'', included achievement of purposes of the Small Business Investment Act of 1958, and required the Administrator to call board and committee meetings, pay transportation expenses and per diem allowances, and rent temporarily necessary accommodations to facilitate conduct of meetings.

Subsec. (b)(15). Pub. L. 90–104, § 107, added par. (15).

1966—Subsec. (b)(1). Pub. L. 89–754 designated existing provisions as subpar. (A) and added subpar. (B).

1964—Subsec. (b)(14). Pub. L. 88–560 added par. (14).

1961—Subsec. (d). Pub. L. 87–305, § 7, added subsec. (d).

Subsec. (e). Pub. L. 87–305, § 8, added subsec. (e).

TERMINATION DATE OF 2004 AMENDMENT

Amendment by section 132(b) of Pub. L. 108–447 repealed Oct. 1, 2006, see section 132(c) Pub. L. 108–447, set out as a note under section 633 of this title.

EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106–398, § 1 [[div. A], title VIII, § 810(e)], Oct. 30, 2000, 114 Stat. 1654, 1654A–210, provided that: ''The amendments made by this section [amending this section and sections 416 and 426 of Title 41, Public Contracts] shall take effect on October 1, 2000. The amendments made by subsections (a), (b), and (c) [amending this section and section 416 of Title 41] shall apply with respect to solicitations issued on or after that date.''

EFFECTIVE DATE OF 1997 AMENDMENTS

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

Amendment by Pub. L. 105–85 effective 180 days after Nov. 18, 1997, see section 850(g) of Pub. L. 105–85, set out as a note under section 2302c of Title 10, Armed Forces.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by sections 207(a), (c) and 303(d), (e) of Pub. L. 100–656 effective Nov. 15, 1988, see section 803(a) of Pub. L. 100–656, set out as a note under section 631 of this title.

Amendment by sections 201(b), 303(c), (g), (h), 304(a), 402–404, and 409 of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(A)–(C) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by section 407 of Pub. L. 100–656 effective with respect to contracts entered into on or after June 1, 1989, see section 803(b)(3) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by sections 209 and 303(b) of Pub. L. 100–656 effective Oct. 1, 1989, see section 803(b)(4)(A), (B) of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10(b)(3) of Pub. L. 100–26 applicable as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2 of Pub. L. 100–26) [title X of section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and title IX of div. A of Pub. L. 99–661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively], see section 12(c) of Pub. L. 100–26, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 101(c) [title X, § 921(b)(2), (c)(1)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(b)(2), (c)(1) of Pub. L. 99–661 effective Oct. 1, 1987, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 921(g) of Pub. L. 99–661, set out as a note under section 632 of this title.

EFFECTIVE AND TERMINATION DATES OF 1984 AMENDMENTS

Section 401(a) of Pub. L. 103–403, as amended by Pub. L. 105–135, title V, § 504, Dec. 2, 1997, 111 Stat. 2624; Pub. L. 106–554, § 1(a)(9) [title V, § 504(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–696, provided that:

''(1) REPEAL.—The amendments made by section 5(a) of Small Business Computer Security and Education Act of 1984 [Pub. L. 98–362, amending this section] (15 U.S.C. 633 note) are hereby repealed.

''(2) EFFECTIVE DATE.—Paragraph (1) shall take effect on September 30, 2003.''

[Repeal by section 401(a) of Pub. L. 103–403, set out as a note above, effective Sept. 30, 1997, was not executed to reflect the probable intent of Congress and subsequent amendment by Pub. L. 105–135, changing the effective date to Sept. 30, 2000. Similarly, repeal effective Sept. 30, 2000, was not executed because of subsequent amendment by Pub. L. 106–554, changing the effective date to Sept. 30, 2003.]

Amendment by section 5(a)(1), (2) of Pub. L. 98–362 effective Oct. 1, 1984, and amendment by section 5(a)(2) of Pub. L. 98–362 repealed Oct. 1, 1994, see section 7 of Pub. L. 98–362, as amended, set out as a note under section 633 of this title.

Section 404(b) of Pub. L. 98–577 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect with respect to any solicitation for bids or proposals issued after March 31, 1985.''

EFFECTIVE DATE OF 1983 AMENDMENTS

Section 1(b)(1), (2) of Pub. L. 98–72 provided that:

''(1) Except as to the amendments made to section 8(e)(4) of the Small Business Act as added by section (a)

of this Act [subsec. (e)(4) of this section], the amendments made by this Act [amending this section] shall apply to procurement actions initiated ninety days after the date of enactment of this Act [Aug. 11, 1983].

''(2) The amendments made to section 8(e)(4) of the Small Business Act as added by section (a) of this Act shall apply to procurement actions initiated on or after October 1, 1983.''

Section 1(b) of Pub. L. 98–47 provided that: ''The designation of an agency pursuant to the amendment made by subsection (a) [amending this section] shall be made not later than sixty days after the date of enactment of this Act [July 13, 1983].''

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–510 effective Oct. 1, 1979, see section 105 of Pub. L. 95–510, set out as a note under section 634 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

For effective date of amendment by Pub. L. 91–375, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

TRANSFER OF FUNCTIONS

Transfer to Director of ACTION [now Corporation for National and Community Service] of functions of Small Business Administration under subsec. (b) of this section insofar as they relate to individuals or groups of persons cooperating with it in the furtherance of purposes of this section, such individuals or groups of persons, in providing technical and managerial aids to small concerns, remaining subject to direction of Small Business Administration, see section 601 of Pub. L. 93–113, set out as a note under section 5041 of Title 42, The Public Health and Welfare, which superseded section 2(a)(3) of Reorg. Plan No. 1 of 1971, eff. July 1, 1971, 36 F.R. 11181, 85 Stat. 819, set out in the Appendix to Title 5, Government Organization and Employees.

REGULATIONS

Pub. L. 108–447, div. K, title I, § 141(b), Dec. 8, 2004, 118 Stat. 3454, provided that: ''The Administration shall, not later than 180 days after the date of enactment of this Act [Dec. 8, 2004], promulgate regulations to carry out the amendments made by subsection (a) [amending this section].''

Pub. L. 106–50, § 303(c), Aug. 17, 1999, 113 Stat. 243, provided that: ''Not later than 30 days after the date of the enactment of this section [Aug. 17, 1999], the Administrator of the Small Business Administration shall issue such guidelines as the Administrator determines to be necessary to carry out this section [amending this section and enacting provisions set out as a note under this section] and the amendment made by this section.''

ENHANCED PUBLICITY DURING OPERATION ALLIED FORCE

Pub. L. 106–50, § 303(b), Aug. 17, 1999, 113 Stat. 243, provided that: ''For the duration of Operation Allied Force and for 120 days thereafter, the Administration shall enhance its publicity of the availability of assistance provided pursuant to the amendment made by this section [amending this section], including information regarding the appropriate local office at which affected small businesses may seek such assistance.''

FEDERAL ACQUISITION REGULATION

Section 416(b) of Pub. L. 105–135 provided that: ''The Federal Acquisition Regulation shall be amended to provide uniform implementation of the amendments made by this section [amending this section].''

IMPLEMENTATION OF AMENDMENT BY PUB. L. 105–85

Section 850(e)(3) of Pub. L. 105–85 provided that: ''The amendments made by paragraphs (1) and (2) [amending this section and section 416 of Title 41, Public Contracts] shall be implemented in a manner consistent with any applicable international agreements.''

MOBILE RESOURCE CENTER PILOT PROGRAM

Section 406 of Pub. L. 103–403 provided that:

''(a) ESTABLISHMENT.—The Administrator of the Small Business Administration may establish and carry out in each of fiscal years 1995, 1996, and 1997 a mobile resource pilot program (hereafter in this section referred to as the 'program') in accordance with the requirements of this section.

''(b) MOBILE RESOURCE CENTER VEHICLES.—Under the program, the Administration may use mobile resource center vehicles to provide technical assistance, information, and other services available from the Small Business Administration to traditionally underserved populations. Two of such vehicles should be utilized in rural areas and 2 of such vehicles should be utilized in urban areas.

''(c) REPORT TO CONGRESS.—If the Administrator conducts the program authorized in this section, the Administrator shall, not later than December 31, 1996, transmit to the Congress a report containing the results of such program, together with recommendations for appropriate legislative and administrative action.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $900,000 for each of fiscal years 1995, 1996, and 1997, such sums to remain available until expended. Of such sums—

''(1) $800,000 may be made available for the purchase or lease of mobile resource center vehicles and operating expenses; and

''(2) $100,000 may be made available for studies, startup expenses, and other administrative expenses.''

PROJECTS FUNDED PURSUANT TO FORMER PROVISIONS

Section 3 of Pub. L. 102–191 provided that: ''Projects funded pursuant to the provisions of former subsection (c) [15 U.S.C. 637(c)] shall be deemed to be funded under and shall be treated as if funded under section 28 of the Small Business Act [15 U.S.C. 656], as added by section 2.''

TWO-YEAR RULE FOR ELIGIBILITY IN MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT PROGRAM

Section 203 of Pub. L. 101–574 provided that:

''(a) IN GENERAL.—The Small Business Administration may prescribe a minimum period of time during which a prospective Program Participant must be in operation in order to meet the eligibility requirements of section 8(a)(7)(A) of the Small Business Act (15 U.S.C. 637(a)(7)(A)), only if the Administration provides a waiver of such minimum period as set forth in subsection (b).

''(b) WAIVER OF MINIMUM PERIOD OF OPERATION.—(1) The Administration shall provide that any requirement it establishes regarding the period of time a prospective Program Participant must be in operation may be waived and, a prospective Program Participant, who otherwise meets the requirements of section 8(a)(7)(A) of the Small Business Act [15 U.S.C. 637(a)(7)(A)], shall be considered to have demonstrated reasonable prospects for success, if—

''(A) the individual or individuals upon whom eligibility is to be based have substantial and demonstrated business management experience;

''(B) the prospective Program Participant has demonstrated technical expertise to carry out its business plan with a substantial likelihood for success;

''(C) the prospective Program Participant has adequate capital to carry out its business plan;

''(D) 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 Program certification; and

''(E) 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.

''(2) The authority to make the determination that a prospective Program Participant has demonstrated its potential for success by meeting the criteria specified in paragraph (1) of this subsection shall be made by the Administrator of the Small Business Administration, or a designee of such officer.''

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

CREDIT FOR INDIAN CONTRACTING IN MEETING CERTAIN MINORITY SUBCONTRACTING GOALS

For provisions that credit toward meeting a subcontracting goal specified in a Department of Defense contract in implementing subsec. (d) of this section may be given for work performed on Indian land or by certain Indian joint ventures, see section 2323a of Title 10, Armed Forces.

TEST PROGRAM FOR NEGOTIATION OF COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLANS

Section 402 of Pub. L. 101–574 provided that: ''To facilitate participation in the test program for the negotiation of comprehensive small business subcontracting plans pursuant to section 834 of the National Defense Authorization Act for Fiscal Years 1990 and 1991 (Public Law 101–189; 103 Stat. 1510) [set out below], subsection (d) of such section is hereby suspended for the period of the test program as specified in subsection (e) of such section.''

Pub. L. 101–189, div. A, title VIII, § 834, Nov. 29, 1989, 103 Stat. 1509, as amended by Pub. L. 102–484, div. A, title VIII, § 805, Oct. 23, 1992, 106 Stat. 2447; Pub. L. 103–355, title VII, § 7103, Oct. 13, 1994, 108 Stat. 3368; Pub. L. 104–106, div. A, title VIII, § 811, Feb. 10, 1996, 110 Stat. 394; Pub. L. 105–85, div. A, title VIII, § 822, Nov. 18, 1997, 111 Stat. 1840; Pub. L. 106–65, div. A, title VIII, § 817, Oct. 5, 1999, 113 Stat. 712; Pub. L. 106–398, § 1 [[div. A], title X, § 1087(g)(1)], Oct. 30, 2000, 114 Stat. 1654, 1654A–293; Pub. L. 108–375, div. A, title VIII, § 843, Oct. 28, 2004, 118 Stat. 2019, provided that:

''(a) TEST PROGRAM.—(1) 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. In selecting the contracting activities to undertake demonstration projects, the Secretary 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.

''(2) In developing the test program, the Secretary of Defense shall—

''(A) consult with the Administrator of the Small Business Administration; and

''(B) provide an opportunity for public comment on the test program.

''(b) COMPREHENSIVE SMALL BUSINESS SUBCONTRACTING PLAN.—(1) 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) 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) 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 supplies or services (including professional services, research and development services, and construction services) pursuant to at least three Department of Defense contracts having an aggregate value of at least $5,000,000.

''(c) WAIVER OF CERTAIN SMALL BUSINESS ACT SUBCONTRACTING PLAN REQUIREMENTS.—A Department of Defense contractor is not required to negotiate or submit a subcontracting plan under paragraph (4) or (5) of section 8(d) of the Small Business Act (15 U.S.C. 637(d)) 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 8(d)(6) of the Small Business Act (15 U.S.C. 637(d)(6));

''(2) such matters have been determined acceptable by the Secretary of the military department or head of a Defense Agency negotiating such 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 8(d)(4)(F) of the Small Business Act (15 U.S.C. 637(d)(4)(F)) 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 that plan.

''(e) TEST PROGRAM PERIOD.—The test program authorized by subsection (a) shall begin on October 1, 1990, unless Congress adopts a resolution disapproving the test program. The test program shall terminate on September 30, 2010.

''(f) REPORT.—(1) Not later than March 1, 1994, the Secretary of Defense shall submit a report on the results of the test program to the Committees on Armed Services and on Small Business of the Senate and the House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate].

''(2) Before submitting such report to the committees referred to in paragraph (1), the Secretary shall transmit the proposed report to the Administrator of the Small Business Administration. The report submitted to the committees shall include any comments and recommendations relating to the report that are transmitted to the Secretary by the Administrator before the date specified in such paragraph.

''(g) DEFINITIONS.—As used in this section:

''(1) The term 'small business concern' shall have the same meaning as is provided in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)), and includes a small business concern owned and controlled by socially and economically disadvantaged individuals.

''(2) The term 'small business concern owned and controlled by socially and economically disadvan-

taged individuals' shall have the same meaning as is provided in section 8(d)(3)(C) of the Small Business Act (15 U.S.C. 637(d)(3)(C)).''

CONTRACT OPTIONS AND MODIFICATIONS

Section 303(f) of Pub. L. 100–656, as amended by Pub. L. 101–37, § 10(d), June 15, 1989, 103 Stat. 73, provided that:

''(1) The Small Business Administration shall make substantial and sustained efforts to achieve a maximum ten-day period as the average processing time for approving options and modifications to contracts awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) and submitted to such Administration for approval.

''(2) Within sixty days after the date of enactment of this Act [Nov. 15, 1988], the Small Business Administration, and the appropriate Federal agency, shall make substantial and sustained efforts to negotiate contract modifications for fair market price for any and all unpriced options contained in active contracts previously awarded pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) with the contractor that was initially awarded such contract.

''(3) During the period of time described in paragraph (2), such agencies shall refrain from procuring such requirements from alternative sources except that, no delay may be incurred pursuant to this paragraph that would cause substantial harm to a public interest.

''(4) The Small Business Administration shall take appropriate actions, including publication in the Federal Register, to advise small business concerns and Federal agencies of the requirements of this subsection.

''(5) The Administration shall, to the maximum extent practicable, minimize delay, eliminate excess regulation, and require only such paperwork as may be necessary to effect the orderly and efficient management of the Program established by section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) and the award of contracts pursuant to section 8(a) of such Act (15 U.S.C. 637(a)).''

LIQUIDATED DAMAGES CLAUSES

Section 304(b) of Pub. L. 100–656 provided that: ''The contract clause required by section 8(d)(4)(F) of the Small Business Act [15 U.S.C. 637(d)(4)(F)] (as added by subsection (a)) 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).''

[Section 304(b) of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(B) of Pub. L. 100–656, as amended, set out as an Effective Date of 1988 Amendment note under section 631 of this title.]

INDIAN TRIBE EXEMPTION

Section 602 of Pub. L. 100–656, as amended by Pub. L. 101–37, § 22, June 15, 1989, 103 Stat. 75; Pub. L. 101–515, title V, § 2, Nov. 5, 1990, 104 Stat. 2140; Pub. L. 101–574, title II, § 205, Nov. 15, 1990, 104 Stat. 2819; Pub. L. 103–403, title VI, § 608, Oct. 22, 1994, 108 Stat. 4204, provided that:

''(a) COMPETITIVE THRESHOLDS.—Section 8(a)(1)(D) of the Small Business Act [15 U.S.C. 637(a)(1)(D)], as added by section 303 of this Act, shall not apply to Program Participants that are owned and controlled by economically disadvantaged Indian tribes, as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)).

''(b) JOINT VENTURES.—The Administration is authorized to award a contract pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) to a joint venture notwithstanding the size status of such joint venture if—

''(1) a party to the joint venture is a Program Participant that is owned and controlled by an economically disadvantaged Indian tribe (as defined pursuant to paragraphs (4) and (13) of section 8(a) of the Small Business Act (15 U.S.C. 637(a)(4) and (13)); and

''(2) such Program Participant:

''(A) owns 51 per centum or more of such joint venture;

''(B) is located on the reservation or former reservation of such tribe as determined by the Secretary of the Interior of such tribe;

''(C) performs most of its activities on such reservation, or such former reservation; and

''(D) employs members of such tribe for at least 50 per centum of its total workforce.

''(c) LIMITATIONS.—A Program Participant, as a party to a joint venture shall receive no more than 5 contracts due solely to the provisions of subsection (b).

''(d) SUNSET.—Subsection (b) shall cease to be effective after September 30, 1997.''

[Section 602 of Pub. L. 100–656 effective Aug. 15, 1989, see section 803(b)(1)(D) of Pub. L. 100–656, as amended, set out as an Effective Date of 1988 Amendment note under section 631 of this title.]

GAO EVALUATION OF SERVICE CORPS OF RETIRED EXECUTIVES; REPORT

Section 107 of Pub. L. 100–590 directed Comptroller General, not later than Dec. 1, 1989, to transmit a report to Small Business Committees of Senate and House of Representatives on functions being performed by volunteers in Service Corps of Retired Executives and Active Corps of Executives, including his evaluation of programs and including conclusions and recommendations concerning efficiency and cost effectiveness of such volunteers.

AUTHORIZATION OF APPROPRIATIONS FOR WOMEN-OWNED SMALL BUSINESS DEMONSTRATION PROJECTS

Section 127(c) of Pub. L. 100–590 provided that: ''There is authorized to be appropriated $10,000,000 to carry out the demonstration projects required pursuant to subsection (a) [amending this section]. The initial projects authorized to be financed by this section [amending this section and enacting provisions set out as notes under this section] shall be funded by January 31, 1989. Notwithstanding any other provision of law, the Small Business Administration may use such expedited acquisition methods as it deems appropriate to achieve the purposes of this subsection, except that it shall insure that all eligible sources are provided a reasonable opportunity to submit proposals.''

Similar provisions were contained in Pub. L. 100–533, title II, § 203, Oct. 25, 1988, 102 Stat. 2692.

SPENDING AUTHORITY FOR CONTRACTS AUTHORIZED FOR WOMEN-OWNED SMALL BUSINESS DEMONSTRATION PROJECTS

Section 127(e) of Pub. L. 100–590 provided that: ''New spending authority or authority to enter into contracts as authorized in this section [amending this section and enacting provisions set out as notes under this section] shall be effective only to such extent and in such amounts as are provided in advance in appropriation Acts.''

RURAL AREA BUSINESS DEVELOPMENT PLANS

Section 129 of Pub. L. 100–590 provided that: ''Within six months of the effective date of this Act [see Effective Date of 1988 Amendment note set out under section 631 of this title], the Administrator shall identify each Federal agency having substantial procurement or grantmaking authority and shall notify each agency so identified. Within six months of notification, each agency shall develop rural area business enterprise development plans. Such plans shall establish rural area enterprise development objectives for the agency and methods for encouraging prime contractors, subcontractors and grant recipients to use small business concerns located in rural areas as subcontractors, suppliers, and otherwise. Such plans shall, to the extent the agency deems appropriate and feasible, include incentive techniques as encouragement.''

BACKGROUND CHECK POLICY; FINGERPRINTING

Section 132 of Pub. L. 100–590 provided that: ''The Small Business Administration 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 Administration has reasonable grounds to believe that the participant's record or background is such as to make the participant ineligible to participate in the relevant program.''

TIME FOR DESIGNATION OF AGENCY

Section 1(b) of Pub. L. 99–567 provided that: ''The designation of an agency pursuant to the amendment made by subsection (a) [amending this section] shall be made not later than sixty days after the date of enactment of this Act [Oct. 27, 1986].''

REPORT TO CONGRESS RESPECTING ASSISTANCE FURNISHED BY PROFITMAKING CONCERNS TO SMALL BUSINESS CONCERNS; CONTENTS

Section 5(b) of Pub. L. 98–362 directed Small Business Administration, not later than Dec. 1, 1987, to report to Committees on Small Business of Senate and House of Representatives on impact of assistance provided in cooperation with profitmaking concerns pursuant to amendment made by section 5(a)(2) of the Small Business Computer Security and Education Act of 1984 [amending this section], including information on benefits provided to small business concerns assisted by Administration's cooperation with profitmaking concerns and any negative impact upon small businesses resulting from such cooperation with profitmaking concerns.

TENNESSEE VALLEY AUTHORITY; PROCUREMENT PROCEDURES UNDER 1983 AND 1984 AMENDMENTS APPLICABLE ONLY TO PROCUREMENTS PAID FROM APPROPRIATED FUNDS

Section 404(c) of Pub. L. 98–577 provided that: ''The provisions of the amendment made by subsection (a) of this section [enacting subsecs. (e) to (j) of this section and striking out former subsec. (e) of this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.''

Section 1(b)(3) of Pub. L. 98–72 provided that: ''The provisions of this Act [amending this section] shall apply to the Tennessee Valley Authority only with respect to procurements to be paid from appropriated funds.''

ASIAN PACIFIC AMERICANS AS DISADVANTAGED MINORITY IN 1978

Section 118(c)(2) of Pub. L. 96–302 provided that the amendment of subsec. (d)(3)(C) by Pub. L. 96–302, including Asian Pacific Americans among the disadvantaged minorities, shall apply as if included in the amendment made by section 211 of Pub. L. 95–507, to subsec. (d) of this section.

BUSINESS PLANS; SUBMITTAL BY CONCERNS ELIGIBLE TO RECEIVE CONTRACTS

Concerns eligible to receive contracts pursuant to subsec. (a) of this section required to submit business plans required under section 636(j)(10)(A)(i) of this title within certain time limits, provided that no determination made under this paragraph shall be considered a denial of total participation for the purposes of subsec. (a)(9) of this section, see section 106(b) of Pub. L. 96–481 set out as a note under section 636 of this title.

REPORTS TO CONGRESS; GENERAL ACCOUNTING OFFICE REPORT ON BUSINESS DEVELOPMENT; QUARTERLY REPORTS BY SMALL BUSINESS ADMINISTRATION TO CONGRESSIONAL COMMITTEES

Section 202(b) of Pub. L. 95–507, as amended by Pub. L. 96–481, title I, § 102, Oct. 21, 1980, 94 Stat. 2321, provided not later than Jan. 31, 1981, the General Accounting Office submit to Congress a report which, with respect to provisions of subsec. (a)(1)(B) and (2) of this section, evaluated the implementation of such provisions and whether such implementation furthered the purposes under section 631(e) of this title, and required the Small Business Administration and the agency designated pursuant to subsec. (a)(1)(B) of this section to submit separate quarterly reports to specific congressional committees, which reports were to contain a review and evaluation of all activities conducted pursuant to subsec. (a)(1)(B) during the previous three-month period, with the first such report submitted commencing on Jan. 2, 1981, for the preceding three-month period, and to continue quarterly through, and include, the quarter ending Sept. 30, 1981.

TERMINATION OF ADVISORY BOARDS AND COMMITTEES

Advisory boards and committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a board or committee established by the President or an officer of the Federal Government, such board or committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board or committee established by the Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

DEFINITION

Section 127(d) of Pub. L. 100–590 provided that: ''For the purposes of this section [amending this section and enacting provisions set out as notes under this section], the term 'small business concern owned and controlled by women' means any small business concern—

''(1) that is at least 51 per centum owned by one or more women; and

''(2) whose management and daily business operations are controlled by one or more of such women.''

Similar provisions were contained in Pub. L. 100–533, title II, § 204, Oct. 25, 1988, 102 Stat. 2692.

## § 637a. Repealed. Pub. L. 89–409, § 3(b), May 2, 1966, 80 Stat. 133

Section, Pub. L. 87–550, § 2, July 25, 1962, 76 Stat. 221, authorized the Administration to make loans to assist in adjusting to competition from imports, described such authority as additional to that under the Small Business Act, provided for application of the Trade Expansion Act of 1962, authorized appropriations, and provided for an effective date. See section 636(e) of this title.

EFFECTIVE DATE OF REPEAL

Repeal effective on July 1, 1966, see section 3(c) of Pub. L. 89–409, set out as a note under section 636 of this title.

## § 637b. Availability of information

### (a) Requests for information

For any contract to be let by any Federal agency, such agency shall provide to any small business concern upon its request—

(1) a copy of bid sets and specifications with respect to such contract;

(2) the name and telephone number of an employee of such agency to answer questions with respect to such contract; and

(3) adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract.

### (b) Exempt contracts

Subsection (a) of this section shall not apply to any contract or subcontract under such contract which—

(1) will be performed entirely outside any State, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; or

(2) is for services which are personal in nature.

(Pub. L. 95–507, title II, § 223, Oct. 24, 1978, 92 Stat. 1772.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

### § 637c. Definitions

For purposes of this Act—

(1) the term ''Administrator'' means the Administrator of the Small Business Administration;

(2) the term ''Federal agency'' has the meaning given the term ''agency'' by section 551(1) of title 5, but does not include the United States Postal Service or the Government Accountability Office; and

(3) the term ''Government procurement contract'' means any contract for the procurement of any goods or services by any Federal agency.

(Pub. L. 95–507, title II, § 224(a), Oct. 24, 1978, 92 Stat. 1772; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REFERENCES IN TEXT

This Act, referred to in text, means Pub. L. 95–507, Oct. 24, 1978, 92 Stat. 1757. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

AMENDMENTS

2004—Par. (2). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

### § 638. Research and development

#### (a) Declaration of policy

Research and development are major factors in the growth and progress of industry and the national economy. The expense of carrying on research and development programs is beyond the means of many small-business concerns, and such concerns are handicapped in obtaining the benefits of research and development programs conducted at Government expense. These small-business concerns are thereby placed at a competitive disadvantage. This weakens the competitive free enterprise system and prevents the orderly development of the national economy. It is the policy of the Congress that assistance be given to small-business concerns to enable them to undertake and to obtain the benefits of research and development in order to maintain and strengthen the competitive free enterprise system and the national economy.

#### (b) Assistance to small-business concerns

It shall be the duty of the Administration, and it is empowered—

(1) to assist small-business concerns to obtain Government contracts for research and development;

(2) to assist small-business concerns to obtain the benefits of research and development performed under Government contracts or at Government expense;

(3) to provide technical assistance to small-business concerns to accomplish the purposes of this section; and[1]

(4) to 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 small business innovation research programs and small business technology transfer programs;

(5) to coordinate with participating agencies a schedule for release of SBIR and STTR solicitations, and to prepare a master release schedule so as to maximize small businesses' opportunities to respond to solicitations;

(6) to independently survey and monitor the operation of SBIR and STTR programs within participating Federal agencies; and

(7) to report not less than annually to the Committee on Small Business of the Senate, and to the Committee on Science and the Committee on Small Business of the House of Representatives, on the SBIR and STTR programs of the Federal agencies and the Administration's information and monitoring efforts related to the SBIR and STTR programs, including the data on output and outcomes collected pursuant to subsections (g)(10), (*o*)(9), and (*o*)(15) of this section, the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns under each of the SBIR and STTR programs, and a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k) of this section.

#### (c) Consultation and cooperation with Government agencies; studies and recommendations

The Administration is authorized to consult and cooperate with all Government agencies and to make studies and recommendations to such agencies, and such agencies are authorized and directed to cooperate with the Administration in order to carry out and to accomplish the purposes of this section.

#### (d) Joint programs; approval of agreements; withdrawal of approval; publication in Federal Register

(1) The Administrator is authorized to consult with representatives of small-business concerns with a view to assisting and encouraging such firms to undertake joint programs for research and development carried out through such corporate or other mechanism as may be most appropriate for the purpose. Such joint programs may, among other things, include the following purposes:

(A) to construct, acquire, or establish laboratories and other facilities for the conduct of research;

(B) to undertake and utilize applied research;

[1] So in original. The word ''and'' probably should not appear.

(C) to collect research information related to a particular industry and disseminate it to participating members;

(D) to conduct applied research on a protected, proprietary, and contractual basis with member or nonmember firms, Government agencies, and others;

(E) to prosecute applications for patents and render patent services for participating members; and

(F) to negotiate and grant licenses under patents held under the joint program, and to establish corporations designed to exploit particular patents obtained by it.

(2) The Administrator may, after consultation with the Attorney General and the Chairman of the Federal Trade Commission, and with the prior written approval of the Attorney General, approve any agreement between small-business firms providing for a joint program of research and development, if the Administrator finds that the joint program proposed will maintain and strengthen the free enterprise system and the economy of the Nation. The Administrator or the Attorney General may at any time withdraw his approval of the agreement and the joint program of research and development covered thereby, if he finds that the agreement or the joint program carried on under it is no longer in the best interests of the competitive free enterprise system and the economy of the Nation. A copy of the statement of any such finding and approval intended to be within the coverage of this subsection, and a copy of any modification or withdrawal of approval, shall be published in the Federal Register. The authority conferred by this subsection on the Administrator shall not be delegated by him.

(3) No act or omission to act pursuant to and within the scope of any joint program for research and development, under an agreement approved by the Administrator under this subsection, 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.]. Upon publication in the Federal Register of the notice of withdrawal of his approval of the agreement granted under this subsection, either by the Administrator or by the Attorney General, the provisions of this subsection shall not apply to any subsequent act or omission to act by reason of such agreement or approval.

**(e) Definitions**

For the purpose of this section—

(1) the term ''extramural budget'' means the sum of the total obligations minus amounts obligated for such activities by employees of the agency in or through Government-owned, Government-operated facilities, except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs, and except that for the Agency for International Development it shall not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries;

(2) the term ''Federal agency'' means an executive agency as defined in section 105 of title 5 or a military department as defined in section 102 of such title, except that it does not include any agency within the Intelligence Community (as the term is defined in section 3.4(f) of Executive Order 12333 or its successor orders);

(3) the term ''funding agreement'' means any contract, grant, or cooperative agreement entered into between any Federal agency and any small business for the performance of experimental, developmental, or research work funded in whole or in part by the Federal Government;

(4) the term ''Small Business Innovation Research Program'' or ''SBIR'' 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 program solicitations;

(B) a second phase, to further develop proposals which 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 by non-Federal sources of capital or, 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;

(5) the term ''research'' or ''research and development'' means any activity which 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;

(6) the term ''Small Business Technology Transfer Program'' or ''STTR'' 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 program 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 by non-Federal sources of capital or, 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;

(7) 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; and

(8) the term ''research institution'' means a nonprofit institution, as defined in section 3703(5) of this title, and includes federally funded research and development centers, as identified by the National Scientific Foundation in accordance with the governmentwide Federal Acquisition Regulation issued in accordance with section 421(c)(1)[2] of title 41 (or any successor regulation thereto).

**(f) Federal agency expenditures for SBIR program**

**(1) Required expenditure amounts**

Each Federal agency which has an extramural budget for research or research and development in excess of $100,000,000 for fiscal year 1992, or any fiscal year thereafter, shall expend with small business concerns—

(A) not less than 1.5 percent of such budget in each of fiscal years 1993 and 1994;

(B) not less than 2.0 percent of such budget in each of fiscal years 1995 and 1996; and

(C) not less than 2.5 percent of such budget in each fiscal year thereafter,

specifically in connection with SBIR programs which meet the requirements of this section, policy directives, and regulations issued under this section.

**(2) Limitations**

A Federal agency shall not—

(A) use any of its SBIR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses; or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentages specified in paragraph (1).

**(3) Exclusion of certain funding agreements**

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an SBIR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

**(g) Administration of small business innovation research programs by Federal agencies required to establish such programs**

Each Federal agency required by subsection (f) of this section to establish a small business innovation research program shall, in accordance with this chapter and regulations issued hereunder—

(1) unilaterally determine categories of projects to be in its SBIR program;

(2) issue small business innovation research solicitations in accordance with a schedule determined cooperatively with the Small Business Administration;

(3) unilaterally determine research topics within the agency's SBIR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified by—

(A) the National Critical Technologies Panel (or its successor) in the 1991 report required under section 6683[3] of title 42, and in subsequent reports issued under that authority; or

(B) the Secretary of Defense, in the 1992 report issued in accordance with section 2522[3] of title 10, and in subsequent reports issued under that authority;

(4) unilaterally receive and evaluate proposals resulting from SBIR proposals;

(5) subject to subsection (*l*) of this section, unilaterally select awardees for its SBIR funding agreements and inform each awardee under such an 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 agency);

(7) make payments to recipients of SBIR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, in all cases, make payment to recipients under such agreements in full, subject to audit, on or before the last

[2] See References in Text note below.

[3] See References in Text note below.

day of the 12-month period beginning on the date of completion of such requirements;

(8) make an annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;

(9) 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 SBIR program, and shall submit such 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; and

(10) collect, and maintain in a common format in accordance with subsection (v) of this section, such information from awardees as is necessary to assess the SBIR program, including information necessary to maintain the database described in subsection (k) of this section.

**(h) Establishment of goals for funding agreements for research or research and development to small business concerns by agencies having budgets for research and development**

In addition to the requirements of subsection (f) of this section, each Federal agency which has a budget for research or research and development in excess of $20,000,000 for any fiscal year beginning with fiscal year 1983 or subsequent fiscal year shall establish goals specifically for funding agreements for research or research and development to small business concerns, and no goal established under this subsection shall be less than the percentage of the agency's research or research and development budget expended under funding agreements with small business concerns in the immediately preceding fiscal year.

**(i) Annual reporting**

**(1) In general**

Each Federal agency required by this section to have an SBIR program or to establish goals shall report annually to the Small Business Administration the number of awards pursuant to grants, contracts, or cooperative agreements over $10,000 in amount and the dollar value of all such awards, identifying SBIR awards and comparing the number and amount of such awards with awards to other than small business concerns.

**(2) Calculation of extramural budget**

**(A) Methodology**

Not later than 4 months after the date of the enactment of each appropriations Act for a Federal agency required by this section to have an SBIR program, the Federal agency shall submit to the Administrator a report, which shall include a description of the methodology used for calculating the amount of the extramural budget of that Federal agency.

**(B) Administrator's analysis**

The Administrator shall include an analysis of the methodology received from each Federal agency referred to in subparagraph (A) in the report required by subsection (b)(7) of this section.

**(j) Small Business Administration policy directives for the general conduct of small business innovation research programs**

**(1) Policy directives**

The Small Business Administration, after consultation with the Administrator of the Office of Federal Procurement Policy, the Director of the Office of Science and Technology Policy, and the Intergovernmental Affairs Division of the Office of Management and Budget, shall, within one hundred and twenty days of July 22, 1982, issue policy directives for the general conduct of the SBIR programs within the Federal Government, including providing for—

(A) simplified, standardized, and timely SBIR solicitations;

(B) a simplified, standardized funding process which provides for (i) the timely receipt and review of proposals; (ii) outside peer review for at least phase two proposals, if appropriate; (iii) protection of proprietary information provided in proposals; (iv) selection of awardees; (v) retention of rights in data generated in the performance of the contract by the small business concern; (vi) transfer of title to property provided by the agency to the small business concern if such a transfer would be more cost effective than recovery of the property by the agency; (vii) cost sharing; and (viii) cost principles and payment schedules;

(C) exemptions from the regulations under paragraph (2)[4] if national security or intelligence functions clearly would be jeopardized;

(D) minimizing regulatory burden associated with participation in the SBIR program for the small business concern which will 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 program;

(E) simplified, standardized, and timely annual report on the SBIR program to the Small Business Administration and the Office of Science and Technology Policy;

(F) standardized and orderly withdrawal from program participation by an agency having a SBIR program; at the discretion of the Administration, such directives may require a phased withdrawal over a period of time sufficient in duration to minimize any adverse impact on small business concerns; and

(G) the voluntary participation in a SBIR program by a Federal agency not required to establish such a program pursuant to subsection (f) of this section.

**(2) Modifications**

Not later than 90 days after October 28, 1992, the Administrator shall modify the policy directives issued pursuant to this subsection to provide for—

(A) retention by a small business concern of the rights to data generated by the concern in the performance of an SBIR award for a period of not less than 4 years;

[4] So in original. Probably should be "subparagraph (B)".

(B) continued use by a small business concern participating in the third phase of the SBIR program, as a directed bailment, of any property transferred by a Federal agency to the small business concern in the second phase of an SBIR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of such program;

(C) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an SBIR program enters into follow-on, non-SBIR funding agreements with the small business concern for such research, development, or production;

(D) an increase to $100,000 in the amount of funds which an agency may award in the first phase of an SBIR program, and to $750,000 in the second phase of an SBIR program, and an adjustment of such amounts once every 5 years to reflect economic adjustments and programmatic considerations;

(E) a process for notifying the participating SBIR agencies and potential SBIR participants of the 1991, 1992, and the current critical technologies, as identified—

(i) by the National Critical Technologies Panel (or its successor), in accordance with section 6683[5] of title 42; or

(ii) by the Secretary of Defense, in accordance with section 2522[5] of title 10;

(F) enhanced outreach efforts to increase the participation of socially and economically disadvantaged small business concerns, as defined in section 637(a)(4) of this title, and the participation of small businesses that are 51 percent owned and controlled by women in technological innovation and in SBIR programs, including the third phase of such programs, and the collection of data to document such participation;

(G) technical and programmatic guidance to encourage agencies to develop gap-funding programs to address the delay between an award for the first phase of an SBIR program and the application for and extension of an award for the second phase of such program;

(H) procedures to ensure that a small business concern that submits a proposal for a funding agreement for the first phase of an SBIR program 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 it was able to secure third phase funding to develop concepts resulting from previous second phase SBIR awards; and

(I) procedures to ensure that agencies participating in the SBIR program retain the information submitted under subparagraph (H) at least until the Government Accountability Office submits the report required under section 105 of the Small Business Research and Development Enhancement Act of 1992.

[5] See References in Text note below.

**(3) Additional modifications**

Not later than 120 days after December 21, 2000, the Administrator shall modify the policy directives issued pursuant to this subsection—

(A) to clarify that the rights provided for under paragraph (2)(A) apply to all Federal funding awards under this section, including the first phase (as described in subsection (e)(4)(A) of this section), the second phase (as described in subsection (e)(4)(B) of this section), and the third phase (as described in subsection (e)(4)(C) of this section);

(B) to provide for the requirement of a succinct commercialization plan with each application for a second phase award that is moving toward commercialization;

(C) to require agencies to report to the Administration, not less frequently than annually, all instances in which an agency pursued research, development, or production of a technology developed by a small business concern using an award made under the SBIR program of that agency, and determined that it was not practicable to enter into a follow-on non-SBIR program funding agreement with the small business concern, which report shall include, at a minimum—

(i) the reasons why the follow-on funding agreement with the small business concern was not practicable;

(ii) the identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) a description of the type of funding agreement under which the research, development, or production was obtained; and

(D) to implement subsection (v) of this section, including establishing standardized procedures for the provision of information pursuant to subsection (k)(3) of this section.

**(k) Database**

**(1) Public database**

Not later than 180 days after December 21, 2000, the Administrator shall develop, maintain, and make available to the public a searchable, up-to-date, electronic database that includes—

(A) 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;

(B) a description of each first phase or second phase SBIR or STTR award received by that small business concern, including—

(i) an abstract of the project funded by the award, excluding any proprietary information so identified by the small business concern;

(ii) the Federal agency making the award; and

(iii) the date and amount of the award;

(C) 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;

(D) information regarding mentors and Mentoring Networks, as required by section 657e(d) of this title; and

(E) with respect to assistance under the STTR program only—

(i) whether the small business concern or the research institution initiated their collaboration on each assisted STTR project;

(ii) whether the small business concern or the research institution originated any technology relating to the assisted STTR project;

(iii) 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

(iv) 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.

**(2) Government database**

Not later than 180 days after December 21, 2000, the Administrator, in consultation with Federal agencies required to have an SBIR program pursuant to subsection (f)(1) of this section or an STTR program pursuant to subsection (n)(1) of this section, shall develop and maintain a database to be used exclusively for SBIR and STTR program evaluation that—

(A) contains for each second phase award made by a Federal agency—

(i) information collected in accordance with paragraph (3) on revenue from the sale of new products or services resulting from the research conducted under the award;

(ii) information collected in accordance with paragraph (3) 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 program 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;

(D) includes any other data collected by or available to any Federal agency that such agency considers may be useful for SBIR or STTR program evaluation; and

(E) is available for use solely for program evaluation purposes by the Federal Government or, in accordance with policy directives issued by the Administration, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.

**(3) Updating information for database**

**(A) In general**

A small business concern applying for a second phase award under this section shall be required to update information in the database established under this subsection for any prior second phase award received by that small business concern. In complying with this paragraph, a small business concern may apportion sales or additional investment information relating to more than one second phase award among those awards, if it notes the apportionment for each award.

**(B) Annual updates upon termination**

A small business concern receiving a second phase award under this section shall—

(i) update information in the database concerning that award at the termination of the award period; and

(ii) be requested to voluntarily update such information annually thereafter for a period of 5 years.

**(4) Protection of information**

Information provided under paragraph (2) shall be considered privileged and confidential and not subject to disclosure pursuant to section 552 of title 5.

**(5) Rule of construction**

Inclusion of information in the database under this subsection shall not be considered to be publication for purposes of subsection (a) or (b) of section 102 of title 35.

***(l)* Reporting of awards made from single proposal, to multiple award winners, or to critical technology topics**

**(1) Single proposal**

If a Federal agency required to establish an SBIR program under subsection (f) of this section makes an award with respect to an SBIR solicitation topic or subtopic for which the agency received only 1 proposal, the agency shall provide written justification for making the award in its next quarterly report to the Administration and in the agency's next annual report required under subsection (g)(8) of this section.

**(2) Multiple awards**

An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) of this section an accounting of the awards the agency has made for the first phase of an SBIR program during the reporting period to entities that have received more than 15 awards for the second phase of an SBIR program during the preceding 5 fiscal years.

**(3) Critical technology awards**

An agency referred to in paragraph (1) shall include in its next annual report required under subsection (g)(8) of this section, an ac-

counting of the number of awards it has made to critical technology topics, as defined in subsection (g)(3) of this section, including an identification of the specific critical technologies topics, and the percentage by number and dollar amount of the agency's total SBIR awards to such critical technology topics.

**(m) Termination**

The authorization to carry out the Small Business Innovation Research Program established under this section shall terminate on September 30, 2008.

**(n) Required expenditures for STTR by Federal agencies**

**(1) Required expenditure amounts**

**(A) In general**

With respect to each fiscal year through fiscal year 2009, each Federal agency that has an extramural budget for research, or research and development, in excess of $1,000,000,000 for that fiscal year, shall expend with small business concerns not less than the percentage of that extramural budget specified in subparagraph (B), specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.

**(B) Expenditure amounts**

The percentage of the extramural budget required to be expended by an agency in accordance with subparagraph (A) shall be—

(i) 0.15 percent for each fiscal year through fiscal year 2003; and

(ii) 0.3 percent for fiscal year 2004 and each fiscal year thereafter.

**(2) Limitations**

A Federal agency shall not—

(A) use any of its STTR budget established pursuant to paragraph (1) for the purpose of funding administrative costs of the program, including costs associated with salaries and expenses, or, in the case of a small business concern or a research institution, costs associated with salaries, expenses, and administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the governmentwide Federal Acquisition Regulation issued in accordance with section 421(c)(1) of title 41); or

(B) make available for the purpose of meeting the requirements of paragraph (1) an amount of its extramural budget for basic research which exceeds the percentage specified in paragraph (1).

**(3) Exclusion of certain funding agreements**

Funding agreements with small business concerns for research or research and development which result from competitive or single source selections other than an STTR program shall not be considered to meet any portion of the percentage requirements of paragraph (1).

**(*o*) Federal agency STTR authority**

Each Federal agency required to establish an STTR program in accordance with subsection (n) of this section and regulations issued under this chapter, shall—

(1) unilaterally determine categories of projects to be included in its STTR program;

(2) issue STTR solicitations in accordance with a schedule determined cooperatively with the Administration;

(3) unilaterally determine research topics within the agency's STTR solicitations, giving special consideration to broad research topics and to topics that further 1 or more critical technologies, as identified—

(A) by the National Critical Technologies Panel (or its successor) in reports required under section 6683[6] of title 42; or

(B) by the Secretary of Defense, in accordance with section 2522[6] of title 10;

(4) unilaterally receive and evaluate proposals resulting from STTR solicitations;

(5) unilaterally select awardees for its STTR funding agreements and inform each awardee under such an 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 agency);

(7) make payments to recipients of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and, 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 the completion of such requirements;

(8) 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 program, and shall submit such 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 data from awardees as is necessary to assess STTR program outputs and outcomes;

(10) submit an annual report on the STTR program to the Administration and the Office of Science and Technology Policy;

(11) adopt the agreement developed by the Administrator under subsection (w) of this section as the agency's model agreement for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(12) 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 (as defined in subsection (e)(8) of this section) that participate in STTR agreements—

(A) are free from organizational conflicts of interests relative to the STTR program;

(B) do not use privileged information gained through work performed for an STTR

[6] See References in Text note below.

agency or private access to STTR agency personnel in the development of an STTR proposal; and

(C) use outside peer review, as appropriate;

(13) not later than July 31, 1993, 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;

(14) implement an outreach program to research institutions and small business concerns for the purpose of enhancing its STTR program, in conjunction with any such outreach done for purposes of the SBIR program; and

(15) collect, and maintain in a common format in accordance with subsection (v) of this section, such information from awardees as is necessary to assess the STTR program, including information necessary to maintain the database described in subsection (k) of this section.

**(p) STTR policy directive**

**(1) Issuance**

The Administrator shall issue a policy directive for the general conduct of the STTR programs within the Federal Government. Such policy directive shall be issued after consultation with—

(A) the heads of each of the Federal agencies required by subsection (n) of this section to establish an STTR program;

(B) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office; and

(C) the Director of the Office of Federal Procurement Policy.

**(2) Contents**

The policy directive required by paragraph (1) shall provide for—

(A) simplified, standardized, and timely STTR solicitations;

(B) a simplified, standardized funding process that provides for—

(i) the timely receipt and review of proposals;

(ii) outside peer review, if appropriate;

(iii) protection of proprietary information provided in proposals;

(iv) selection of awardees;

(v) retention by a small business concern of the rights to data generated by the concern in the performance of an STTR award for a period of not less than 4 years;

(vi) 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 STTR program for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of such program;

(vii) cost sharing;

(viii) cost principles and payment schedules; and

(ix) 1-year awards for the first phase of an STTR program, generally not to exceed $100,000, and 2-year awards for the second phase of an STTR program, generally not to exceed $750,000, greater or lesser amounts to be awarded at the discretion of the awarding agency, and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project;

(C) minimizing regulatory burdens associated with participation in STTR programs;

(D) guidelines for a model agreement, to be used by all agencies, for allocating between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization;

(E) procedures to ensure that—

(i) a recipient of an STTR award is a small business concern, as defined in section 632 of this title and the regulations promulgated thereunder; and

(ii) such small business concern exercises management and control of the performance of the STTR funding agreement pursuant to a business plan providing for the commercialization of the technology that is the subject matter of the award; and

(F) procedures to ensure, to the extent practicable, that an agency which intends to pursue research, development, or production of a technology developed by a small business concern under an STTR program enters into follow-on, non-STTR funding agreements with the small business concern for such research, development, or production.

**(3) Modifications**

Not later than 120 days after October 15, 2001, the Administrator shall modify the policy directive issued pursuant to this subsection to clarify that the rights provided for under paragraph (2)(B)(v) apply to all Federal funding awards under this section, including the first phase (as described in subsection (e)(6)(A) of this section), the second phase (as described in subsection (e)(6)(B) of this section), and the third phase (as described in subsection (e)(6)(C) of this section).

**(q) Discretionary technical assistance**

**(1) In general**

Each Federal agency required by this section to conduct an SBIR program may enter into an agreement with a vendor selected under paragraph (2) 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

on-line data bases, for the purpose of assisting such concerns in—

(A) making better technical decisions concerning such projects;

(B) solving technical problems which arise during the conduct of such projects;

(C) minimizing technical risks associated with such projects; and

(D) developing and commercializing new commercial products and processes resulting from such projects.

**(2) Vendor selection**

Each agency may select a vendor to assist small business concerns to meet the goals listed in paragraph (1) for a term not to exceed 3 years. Such selection shall be competitive and shall utilize merit-based criteria.

**(3) Additional technical assistance**

**(A) First phase**

Each agency referred to in paragraph (1) may provide services described in paragraph (1) 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.

**(B) Second phase**

Each agency referred to in paragraph (1) may authorize any second phase SBIR award recipient to purchase, with funds available from their SBIR awards, services described in paragraph (1), in an amount equal to not more than $4,000 per year.

**(r) Third phase agreements**

**(1) 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 program, a Federal agency may enter into a third phase agreement with that business concern for additional work to be performed during or after the second phase period. The second phase funding agreement with the small business concern may, at the discretion of the agency awarding the agreement, set out the procedures applicable to third phase agreements with that agency or any other agency.

**(2) "Third phase agreement" defined**

In this subsection, the term ''third phase agreement'' means a follow-on, non-SBIR or non-STTR funded contract as described in paragraph (4)(C) or paragraph (6)(C) of subsection (e) of this section.

**(3) Intellectual property rights**

Each funding agreement under an SBIR or STTR program shall include provisions setting forth the respective rights of the United States and the small business concern with respect to intellectual property rights and with respect to any right to carry out follow-on research.

**(s) Outreach**

**(1) "Eligible State" defined**

In this subsection, the term ''eligible State'' means a State—

(A) if the total value of contracts awarded to the State during fiscal year 1995 under this section was less than $5,000,000; and

(B) that certifies to the Administration described in paragraph (2)[7] that the State will, upon receipt of assistance under this subsection, provide matching funds from non-Federal sources in an amount that is not less than 50 percent of the amount provided under this subsection.

**(2) Program authority**

Of amounts made available to carry out this section for each of the fiscal years 2000 through 2005, the Administrator may expend with eligible States not more than $2,000,000 in each such fiscal year in order to increase the participation of small business concerns located in those States in the programs under this section.

**(3) Amount of assistance**

The amount of assistance provided to an eligible State under this subsection in any fiscal year—

(A) shall be equal to twice the total amount of matching funds from non-Federal sources provided by the State; and

(B) shall not exceed $100,000.

**(4) Use of assistance**

Assistance provided to an eligible State under this subsection shall be used by the State, in consultation with State and local departments and agencies, for programs and activities to increase the participation of small business concerns located in the State in the programs under this section, including—

(A) the establishment of quantifiable performance goals, including goals relating to—

(i) the number of program awards under this section made to small business concerns in the State; and

(ii) the total amount of Federal research and development contracts awarded to small business concerns in the State;

(B) the provision of competition outreach support to small business concerns in the State that are involved in research and development; and

(C) the development and dissemination of educational and promotional information relating to the programs under this section to small business concerns in the State.

**(t) Inclusion in strategic plans**

Program information relating to the SBIR and STTR programs shall be included by each Federal agency in any update or revision required of the Federal agency under section 306(b) of title 5.

**(u) Coordination of technology development programs**

**(1) Definition of technology development program**

In this subsection, the term ''technology development program'' means—

(A) the Experimental Program to Stimulate Competitive Research of the National Science Foundation, as established under section 1862g of title 42;

[7] So in original. The words ''described in paragraph (2)'' probably should not appear.

(B) the Defense Experimental Program to Stimulate Competitive Research of the Department of Defense;

(C) the Experimental Program to Stimulate Competitive Research of the Department of Energy;

(D) the Experimental Program to Stimulate Competitive Research of the Environmental Protection Agency;

(E) the Experimental Program to Stimulate Competitive Research of the National Aeronautics and Space Administration;

(F) the Institutional Development Award Program of the National Institutes of Health; and

(G) the National Research Initiative Competitive Grants Program of the Department of Agriculture.

**(2) Coordination requirements**

Each Federal agency that is subject to subsection (f) of this section and that has established a technology development program may, in each fiscal year, review for funding under that technology development program—

(A) any proposal to provide outreach and assistance to one or more small business concerns interested in participating in the SBIR program, including any proposal to make a grant or loan to a company to pay a portion or all of the cost of developing an SBIR proposal, from an entity, organization, or individual located in—

(i) a State that is eligible to participate in that program; or

(ii) a State described in paragraph (3); or

(B) any 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—

(i) a State that is eligible to participate in a technology development program; or

(ii) a State described in paragraph (3).

**(3) Additionally eligible State**

A State referred to in subparagraph (A)(ii) or (B)(ii) of paragraph (2) is a State in which the total value of contracts awarded to small business concerns under all SBIR programs 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 biennial fiscal years, beginning with fiscal year 2000, based on the most recent statistics compiled by the Administrator.

**(v) Simplified reporting requirements**

The Administrator shall work with the Federal agencies required by this section to have an SBIR or STTR program to standardize reporting requirements for the collection of data from SBIR or STTR applicants and awardees, including data for inclusion in the database under subsection (k) of this section, taking into consideration the unique needs of each agency, and to the extent possible, permitting the updating of previously reported information by electronic means. Such requirements shall be designed to minimize the burden on small businesses.

**(w) STTR model agreement for intellectual property rights**

**(1) In general**

The Administrator shall promulgate regulations establishing a single model agreement for use in the STTR program that allocates between small business concerns and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

**(2) Opportunity for comment**

In promulgating regulations under paragraph (1), the Administrator shall provide to affected agencies, small business concerns, research institutions, and other interested parties the opportunity to submit written comments.

(Pub. L. 85–536, § 2[9], July 18, 1958, 72 Stat. 391; Pub. L. 97–219, §§ 3–5, July 22, 1982, 96 Stat. 217, 218, 221; Pub. L. 99–443, §§ 1, 2, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 100–590, title I, § 108, Nov. 3, 1988, 102 Stat. 2994; Pub. L. 102–484, div. D, title XLII, § 4237(d), Oct. 23, 1992, 106 Stat. 2692; Pub. L. 102–564, title I, §§ 103, 104, title II, § 202(a)–(c), title III, §§ 301(a), 305, Oct. 28, 1992, 106 Stat. 4250, 4254, 4256, 4257, 4261, 4262; Pub. L. 103–403, title VI, § 607, Oct. 22, 1994, 108 Stat. 4204; Pub. L. 104–208, div. D, title I, § 110, Sept. 30, 1996, 110 Stat. 3009–733; Pub. L. 105–135, title V, § 501, Dec. 2, 1997, 111 Stat. 2620; Pub. L. 106–113, div. B, § 1000(a)(9) [title IV, § 4732(b)(5)], Nov. 29, 1999, 113 Stat. 1536, 1501A–583; Pub. L. 106–554, § 1(a)(9) [title I, §§ 103–107, 109, 110, 111(c), 113, 114(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–669, 2763A–673, 2763A–679, 2763A–681; Pub. L. 107–50, §§ 2, 3(a), 4–7, Oct. 15, 2001, 115 Stat. 263–265; Pub. L. 108–271, § 8(b), July 7, 2004, 118 Stat. 814.)

REPEAL OF SUBSECTION (s)

*Pub. L. 105–135, title V, § 501(b)(2), Dec. 2, 1997, 111 Stat. 2622, as amended, provided that, effective October 1, 2005, subsection (s) of this section is repealed.*

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (d)(3), are classified generally to chapter 1 (§ 1 et seq.) of this title.

The Federal Trade Commission Act, referred to in subsec. (d)(3), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

Executive Order 12333, referred to in subsec. (e)(2), is set out as a note under section 401 of Title 50, War and National Defense.

Section 421(c)(1) of title 41, referred to in subsec. (e)(8), was in the original "section 35(c)(1) of the Office of Federal Procurement Policy Act" which has been translated as meaning section 25(c)(1) of that Act to reflect the probable intent of Congress because that Act does not contain a section 35 and section 25(c) of that Act relates to issuance of the Federal Acquisition Regulation.

Section 6683 of title 42, referred to in subsecs. (g)(3)(A), (j)(2)(E)(i), and (*o*)(3)(A), was omitted from the Code.

Section 2522 of title 10, referred to in subsecs. (g)(3)(B), (j)(2)(E)(ii), and (*o*)(3)(B), which related to annual defense critical technology plan, was repealed, and section 2518 (relating to Defense Advanced Manufactur-

ing Technology Partnerships) was redesignated as section 2522, by Pub. L. 102–484, div. D, title XLII, §§4202(a), 4232(a), Oct. 23, 1992, 106 Stat. 2659, 2687, and subsequently repealed.

Section 105 of the Small Business Research and Development Enhancement Act of 1992, referred to in subsec. (j)(2)(I), is section 105 of Pub. L. 102–564, which is set out below.

CODIFICATION

Section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, was previously classified to this section. See section 645 of this title and Codification note set out under section 631 of this title.

AMENDMENTS

2004—Subsec. (j)(2)(I). Pub. L. 108–271 substituted ''Government Accountability Office'' for ''General Accounting Office''.

2001—Subsec. (b)(4). Pub. L. 107–50, §2(b), struck out ''pilot'' before ''programs;''.

Subsec. (b)(7). Pub. L. 107–50, §6(d), substituted '', (*o*)(9), and (*o*)(15) of this section, the number of proposals received from, and the number and total amount of awards to, HUBZone small business concerns under each of the SBIR and STTR programs,'' for ''and (*o*)(9) of this section,''.

Subsec. (e)(6). Pub. L. 107–50, §2(b), struck out ''pilot'' before ''program'' in introductory provisions.

Subsec. (k)(1). Pub. L. 107–50, §6(b)(1), inserted ''or STTR'' after ''SBIR'' in subpars. (A) to (C) and added subpar. (E).

Subsec. (k)(2). Pub. L. 107–50, §6(b)(2)(A), (B), in introductory provisions, inserted ''or an STTR program pursuant to subsection (n)(1) of this section'' after ''(f)(1) of this section'' and substituted ''exclusively for SBIR and STTR'' for ''solely for SBIR''.

Subsec. (k)(2)(A)(iii). Pub. L. 107–50, §6(b)(2)(C), inserted ''and STTR'' after ''SBIR''.

Subsec. (k)(2)(D). Pub. L. 107–50, §6(b)(2)(D), inserted ''or STTR'' after ''SBIR''.

Subsec. (n)(1). Pub. L. 107–50, §2(a), amended heading and text of par. (1) generally. Prior to amendment, text read as follows: ''With respect to fiscal years 1998, 1999, 2000, and 2001, each Federal agency that has an extramural budget for research, or research and development, in excess of $1,000,000,000 for that fiscal year, is authorized to expend with small business concerns not less than 0.15 percent of that extramural budget specifically in connection with STTR programs that meet the requirements of this section and any policy directives and regulations issued under this section.''

Subsec. (*o*)(11). Pub. L. 107–50, §7(b), substituted ''adopt the agreement developed by the Administrator under subsection (w) of this section as the agency's model agreement'' for ''develop a model agreement not later than July 31, 1993, to be approved by the Administration,''.

Subsec. (*o*)(14). Pub. L. 107–50, §4, added par. (14).

Subsec. (*o*)(15). Pub. L. 107–50, §6(a), added par. (15).

Subsec. (p)(2)(B)(ix). Pub. L. 107–50, §3, substituted ''$750,000'' for ''$500,000'' and inserted '', and shorter or longer periods of time to be approved at the discretion of the awarding agency where appropriate for a particular project'' before the semicolon at the end.

Subsec. (p)(3). Pub. L. 107–50, §5, added par. (3).

Subsec. (v). Pub. L. 107–50, §6(c), inserted ''or STTR'' after ''SBIR'' in two places.

Subsec. (w). Pub. L. 107–50, §7(a), added subsec. (w).

2000—Subsec. (b)(7). Pub. L. 106–554, §1(a)(9) [title I, §107(b)], inserted before period at end '', including the data on output and outcomes collected pursuant to subsections (g)(10) and (*o*)(9) of this section, and a description of the extent to which Federal agencies are providing in a timely manner information needed to maintain the database described in subsection (k) of this section''.

Pub. L. 106–554, §1(a)(9) [title I, §104], substituted '', and to the Committee on Science and the Committee on Small Business of the House of Representatives,'' for ''and the Committee on Small Business of the House of Representatives''.

Subsec. (e)(4)(C)(i). Pub. L. 106–554, §1(a)(9) [title I, §105], substituted ''; or'' for ''; and'' at end.

Subsec. (g)(9). Pub. L. 106–554, §1(a)(9) [title I, §106], added par. (9).

Subsec. (g)(10). Pub. L. 106–554, §1(a)(9) [title I, §107(a)], added par. (10).

Subsec. (i). Pub. L. 106–554, §1(a)(9) [title I, §109], inserted subsec. heading, designated existing provisions as par. (1), inserted par. heading, and added par. (2).

Subsec. (j)(3). Pub. L. 106–554, §1(a)(9) [title I, §110], added par. (3).

Subsec. (k). Pub. L. 106–554, §1(a)(9) [title I, §107(c)], amended subsec. (k) generally, substituting present provisions for provisions which read ''(k) [Reserved]''.

Subsec. (m). Pub. L. 106–554, §1(a)(9) [title I, §103], amended heading and text generally. Prior to amendment, text read as follows: ''The authorization to carry out the Small Business Innovation Research Program under this section shall terminate on October 1, 2000.''

Subsec. (s)(2). Pub. L. 106–554, §1(a)(9) [title I, §114(b)], substituted ''for each of the fiscal years 2000 through 2005,'' for ''for fiscal year 1998, 1999, 2000, or 2001''.

Subsec. (u). Pub. L. 106–554, §1(a)(9) [title I, §111(c)], added subsec. (u).

Subsec. (v). Pub. L. 106–554, §1(a)(9) [title I, §113], added subsec. (v).

1999—Subsec. (p)(1)(B). Pub. L. 106–113 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''the Commissioner of Patents and Trademarks; and''.

1997—Subsec. (e)(4)(A). Pub. L. 105–135, §501(b)(1)(B), substituted ''subparagraph (B)'' for ''subparagraph (B)(ii)''.

Subsec. (n)(1). Pub. L. 105–135, §501(a), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''Each Federal agency which has an extramural budget for research or research and development in excess of $1,000,000,000 in fiscal year 1994, 1995, or 1996, is authorized to expend with small business concerns—

''(A) not less than 0.05 percent of such budget in fiscal year 1994;

''(B) not less than 0.1 percent of such budget in fiscal year 1995; and

''(C) not less than 0.15 percent of such budget in fiscal years 1996 and 1997,

specifically in connection with STTR programs which meet the requirements of this section, policy directives, and regulations issued under this section.''

Subsec. (*o*)(8) to (13). Pub. L. 105–135, §501(b)(1)(A), added pars. (8) and (9) and redesignated former pars. (8) to (11) as (10) to (13), respectively.

Subsecs. (s), (t). Pub. L. 105–135, §501(b)(1)(C), added subsecs. (s) and (t).

1996—Subsec. (n)(1)(C). Pub. L. 104–208 substituted ''fiscal years 1996 and 1997'' for ''fiscal year 1996''.

1994—Subsec. (q)(2). Pub. L. 103–403 amended heading and text of par. (2) generally. Prior to amendment, text read as follows: ''Annually, each agency may select a vendor for purposes of this subsection using competitive, merit-based criteria, to assist small business concerns to meet the goals listed in paragraph (1).''

1992—Subsec. (b)(4). Pub. L. 102–564, §202(a)(1), inserted before semicolon at end ''and small business technology transfer pilot programs''.

Subsec. (b)(5) to (7). Pub. L. 102–564, §202(a)(2), inserted ''and STTR'' after ''SBIR'' wherever appearing.

Subsec. (e)(1). Pub. L. 102–564, §103(c), substituted ''for the Department of Energy it shall not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs'' for ''for the Department of Defense it shall not include amounts obligated solely for operational systems development''.

Pub. L. 102–484, §4237(d)(1), (2)(A), (h)(2), temporarily amended par. (1) by striking out ''except that for the Department of Defense it shall not include amounts ob-

ligated solely for operational systems development, and'' after ''Government-operated facilities,'' and substituting '', and except that for the Department of Energy it shall not include amounts obligated for atomic energy defense programs for weapons and weapons-related activities or for naval reactor programs;'' for semicolon at end. See section 4237(h)(2) of Pub. L. 102–484 set out in a Small Business Innovation Research Program in Department of Defense note below.

Subsec. (e)(4)(A). Pub. L. 102–564, § 103(a)(1), inserted ''that appear to have commercial potential, as described in subparagraph (B)(ii),'' after ''ideas''.

Subsec. (e)(4)(B). Pub. L. 102–564, § 103(a)(2), added subpar. (B) and struck out former subpar. (B) which read as follows: ''a second phase to further develop the proposed ideas to meet the particular program needs, the awarding of which shall take into consideration the scientific and technical merit and feasibility evidenced by the first phase and, where two or more proposals are evaluated as being of approximately equal scientific and technical merit and feasibility, special consideration shall be given to those proposals that have demonstrated third phase, non-Federal capital commitments; and''.

Subsec. (e)(4)(C). Pub. L. 102–564, § 103(a)(2), added subpar. (C) and struck out former subpar. (C) which read as follows: ''where appropriate, a third phase in which non-Federal capital pursues commercial applications of the research or research and development and which may also involve follow-on non-SBIR funded production contracts with a Federal agency for products or processes intended for use by the United States Government; and''.

Subsec. (e)(6) to (8). Pub. L. 102–564, § 202(b), added pars. (6) to (8).

Subsec. (f). Pub. L. 102–564, § 103(b), amended subsec. (f) generally. Prior to amendment, subsec. (f) consisted of pars. (1) and (2) relating to Federal agency extramural budget expenditures for fiscal years 1982 and thereafter for small business concerns in connection with small business innovation research programs meeting the requirements of the Small Business Innovation Development Act of 1982.

Subsec. (f)(2). Pub. L. 102–484, § 4237(d)(2)(B), (h)(2), temporarily struck out par. (2) which read ''Amounts appropriated for atomic energy defense programs of the Department of Energy shall for the purposes of paragraph (1) be excluded from the amount of the research or research and development budget of that Department.'' See section 4237(h)(2) of Pub. L. 102–484 set out in a Small Business Innovation Research Program in Department of Defense note below.

Subsec. (g)(3), (4). Pub. L. 102–564, § 103(d), added par. (3) and redesignated former par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (g)(5). Pub. L. 102–564, § 103(d)(1), (h)(2), (i), redesignated par. (4) as (5) and inserted ''subject to subsection (*l*) of this section,'' before ''unilaterally'' and ''and inform each awardee under such an agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement'' before semicolon at end. Former par. (5) redesignated (6).

Subsec. (g)(6). Pub. L. 102–564, § 103(d)(1), redesignated par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (g)(7). Pub. L. 102–564, § 103(d)(1), (e), redesignated par. (6) as (7) and inserted before semicolon at end ''and, 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 such requirements''. Former par. (7) redesignated (8).

Subsec. (g)(8). Pub. L. 102–564, § 103(d)(1), redesignated par. (7) as (8).

Subsec. (j). Pub. L. 102–564, § 103(f), designated existing provisions as par. (1) and inserted heading, redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), former subpars. (A) to (H) of former par. (2) as cls. (i) to (viii), respectively, of subpar. (B) of par. (1), and former pars. (3) to (7) as subpars. (C) to (G), respectively, of par. (1), and added par. (2).

Subsec. (k). Pub. L. 102–564, § 103(g), amended subsec. (k) generally, substituting ''(k) [Reserved]'' for prior provisions of subsec. (k) which read as follows: ''The Director of the Office of Science and Technology Policy, in consultation with the Federal Coordinating Council for Science, Engineering and Research, shall, in addition to such other responsibilities imposed upon him by the Small Business Innovation Development Act of 1982—

''(1) independently survey and monitor all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, including compliance with the expenditures of funds according to the requirements of subsection (f) of this section; and

''(2) report not less than annually, and at such other times as the Director may deem appropriate, to the Committees on Small Business of the Senate and the House of Representatives on all phases of the implementation and operation of SBIR programs within agencies required to establish an SBIR program, together with such recommendations as the Director may deem appropriate.''

Subsec. (*l*). Pub. L. 102–564, § 103(h)(1), added subsec. (*l*).

Subsec. (m). Pub. L. 102–564, § 104(b), added subsec. (m).

Subsecs. (n) to (p). Pub. L. 102–564, § 202(c), added subsecs. (n) to (p).

Subsec. (q). Pub. L. 102–564, § 301(a), added subsec. (q).

Subsec. (r). Pub. L. 102–564, § 305, added subsec. (r).

1988—Subsec. (j)(6), (7). Pub. L. 100–590 added pars. (6) and (7).

1986—Subsec. (e)(1). Pub. L. 99–443, § 1, inserted provision that for the Department of Defense, the extramural budget shall not include amounts obligated solely for operational systems development.

1982—Subsec. (b)(4) to (7). Pub. L. 97–219, § 3, added pars. (4) to (7).

Subsecs. (e) to (k). Pub. L. 97–219, § 4, added subsecs. (e) to (k).

### CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

### EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–50, § 3(b), Oct. 15, 2001, 115 Stat. 263, provided that: ''The amendments made by subsection (a) [amending this section] shall be effective beginning in fiscal year 2004.''

### EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106–113 effective 4 months after Nov. 29, 1999, see section 1000(a)(9) [title IV, § 4731] of Pub. L. 106–113, set out as a note under section 1 of Title 35, Patents.

### EFFECTIVE AND TERMINATION DATES OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

Section 501(b)(2) of Pub. L. 105–135, as amended by Pub. L. 106–554, § 1(a)(9) [title I, § 114(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–681, provided that: ''Effective October 1, 2005, section 9(s) of the Small Business Act [15 U.S.C. 638(s)] (as added by paragraph (1) of this subsection) is repealed.''

### EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

### EFFECTIVE AND TERMINATION DATES OF 1992 AMENDMENT

For effective and termination dates of amendment by Pub. L. 102–484, see section 4237(g) and (h) of Pub. L.

102–484, set out in a Small Business Innovation Research Program in Department of Defense note below.

TERMINATION DATE OF 1982 AMENDMENT

Section 5 of Pub. L. 97–219, as amended by Pub. L. 99–443, § 2, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 102–484, div. D, title XLII, § 4237(a), Oct. 23, 1992, 106 Stat. 2691, which provided that effective Oct. 1, 1993, subsecs. (b)(4) through (7) and (e) through (k) of this section were to be repealed, was repealed by Pub. L. 102–564, title I, § 104(a), Oct. 28, 1992, 106 Stat. 4254.

CONTINUATION OF SBIR PROGRAM BEYOND TERMINATION DATE

Pub. L. 106–554, § 1(a)(4) [div. B, title I, § 149], Dec. 21, 2000, 114 Stat. 2763, 2763A–251, provided that: ''The Small Business Innovation Research program, otherwise expiring at the end of fiscal year 2000, is authorized to continue in effect during fiscal year 2001.''

CONGRESSIONAL FINDINGS: SMALL BUSINESS INNOVATION RESEARCH PROGRAM REAUTHORIZATION ACT OF 2000

Pub. L. 106–554, § 1(a)(9) [title I, § 102], Dec. 21, 2000, 114 Stat. 2763, 2763A–668, provided that: ''Congress finds that—

''(1) the small business innovation research program established under the Small Business Innovation Development Act of 1982 [see Short Title of 1982 Amendment note set out under section 631 of this title], and reauthorized by the Small Business Research and Development Enhancement Act of 1992 [see Short Title of 1992 Amendments note set out under section 631 of this title] (in this title [see Short Title of 2000 Amendment note set out under section 631 of this title] referred to as the 'SBIR program') is highly successful in involving small businesses in federally funded research and development;

''(2) the SBIR program made the cost-effective and unique research and development capabilities possessed by the small businesses of the Nation available to Federal agencies and departments;

''(3) the innovative goods and services developed by small businesses that participated in the SBIR program have produced innovations of critical importance in a wide variety of high-technology fields, including biology, medicine, education, and defense;

''(4) the SBIR program is a catalyst in the promotion of research and development, the commercialization of innovative technology, the development of new products and services, and the continued excellence of this Nation's high-technology industries; and

''(5) the continuation of the SBIR program will provide expanded opportunities for one of the Nation's vital resources, its small businesses, will foster invention, research, and technology, will create jobs, and will increase this Nation's competitiveness in international markets.''

NATIONAL RESEARCH COUNCIL REPORTS

Pub. L. 106–554, § 1(a)(9) [title I, § 108], Dec. 21, 2000, 114 Stat. 2763, 2763A–671, provided that:

''(a) STUDY AND RECOMMENDATIONS.—The head of each agency with a budget of more than $50,000,000 for its SBIR program for fiscal year 1999, in consultation with the Small Business Administration, shall, not later than 6 months after the date of the enactment of this Act [Dec. 21, 2000], cooperatively enter into an agreement with the National Academy of Sciences for the National Research Council to—

''(1) conduct a comprehensive study of how the SBIR program has stimulated technological innovation and used small businesses to meet Federal research and development needs, including—

''(A) a review of the value to the Federal research agencies of the research projects being conducted under the SBIR program, and of the quality of research being conducted by small businesses participating under the program, including a comparison of the value of projects conducted under the SBIR program to those funded by other Federal research and development expenditures;

''(B) to the extent practicable, an evaluation of the economic benefits achieved by the SBIR program, including the economic rate of return, and a comparison of the economic benefits, including the economic rate of return, achieved by the SBIR program with the economic benefits, including the economic rate of return, of other Federal research and development expenditures;

''(C) an evaluation of the noneconomic benefits achieved by the SBIR program over the life of the program;

''(D) a comparison of the allocation for fiscal year 2000 of Federal research and development funds to small businesses with such allocation for fiscal year 1983, and an analysis of the factors that have contributed to such allocation; and

''(E) an analysis of whether Federal agencies, in fulfilling their procurement needs, are making sufficient effort to use small businesses that have completed a second phase award under the SBIR program; and

''(2) make recommendations with respect to—

''(A) measures of outcomes for strategic plans submitted under section 306 of title 5, United States Code, and performance plans submitted under section 1115 of title 31, United States Code, of each Federal agency participating in the SBIR program;

''(B) whether companies who can demonstrate project feasibility, but who have not received a first phase award, should be eligible for second phase awards, and the potential impact of such awards on the competitive selection process of the program;

''(C) whether the Federal Government should be permitted to recoup some or all of its expenses if a controlling interest in a company receiving an SBIR award is sold to a foreign company or to a company that is not a small business concern;

''(D) how to increase the use by the Federal Government in its programs and procurements of technology-oriented small businesses; and

''(E) improvements to the SBIR program, if any are considered appropriate.

''(b) PARTICIPATION BY SMALL BUSINESS.—

''(1) IN GENERAL.—In a manner consistent with law and with National Research Council study guidelines and procedures, knowledgeable individuals from the small business community with experience in the SBIR program shall be included—

''(A) in any panel established by the National Research Council for the purpose of performing the study conducted under this section; and

''(B) among those who are asked by the National Research Council to peer review the study.

''(2) CONSULTATION.—To ensure that the concerns of small business are appropriately considered under this subsection, the National Research Council shall consult with and consider the views of the Office of Technology and the Office of Advocacy of the Small Business Administration and other interested parties, including entities, organizations, and individuals actively engaged in enhancing or developing the technological capabilities of small business concerns.

''(c) PROGRESS REPORTS.—The National Research Council shall provide semiannual progress reports on the study conducted under this section to the Committee on Science and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] of the Senate.

''(d) REPORT.—The National Research Council shall transmit to the heads of agencies entering into an agreement under this section and to the Committee on Science and the Committee on Small Business of the House of Representatives, and to the Committee on Small Business [now Committee on Small Business and Entrepreneurship] of the Senate—

''(1) not later than 3 years after the date of the enactment of this Act [Dec. 21, 2000], a report including

the results of the study conducted under subsection (a)(1) and recommendations made under subsection (a)(2); and

''(2) not later than 6 years after that date of the enactment, an update of such report.''

CONGRESSIONAL FINDINGS AND PURPOSES: SMALL BUSINESS RESEARCH AND DEVELOPMENT ENHANCEMENT ACT OF 1992

Section 102 of title I of Pub. L. 102–564 provided that: ''(a) FINDINGS.—The Congress finds that—

''(1) the small business innovation research program established under the Small Business Innovation Development Act of 1982 [see Short Title of 1982 Amendment note set out under section 631 of this title] (hereafter in this Act [see Short Title of 1992 Amendments note set out under section 631 of this title] referred to as the 'SBIR' program) has been a successful method of involving small business concerns in Federal research and development;

''(2) the small business innovation research program has been an effective catalyst for the development of technological innovations by small business concerns;

''(3) small business innovation research program participants have provided high quality research and development in a cost-effective manner;

''(4) the innovative products and services developed by small business concerns participating in the small business innovation research program have been important to the national defense, as well as to the missions of the other participating Federal agencies;

''(5) the small business innovation research program has effectively stimulated the commercialization of technology developed through Federal research and development, benefiting both the public and private sectors of the Nation;

''(6) by encouraging the development and commercialization of technological innovations, the small business innovation research program has created jobs, expanded business opportunities for small firms, stimulated the development of new products and services, and improved the competitiveness of the Nation's high technology industries;

''(7) the small business innovation research program has also helped to increase exports from small business concerns;

''(8) despite the general success of the small business innovation research program, the proportion of Federal research and development funds received by small business concerns has not increased over the life of the program, but has remained at 3 percent; and

''(9) although the participating Federal agencies have successfully implemented most aspects of the small business innovation research program, additional outreach efforts are necessary to stimulate increased participation of socially and economically disadvantaged small business concerns.

''(b) PURPOSES.—The purposes of this title [see Short Title of 1992 Amendments note set out under section 631 of this title] are—

''(1) to expand and improve the small business innovation research program;

''(2) to emphasize the program's goal of increasing private sector commercialization of technology developed through Federal research and development;

''(3) to increase small business participation in Federal research and development; and

''(4) to improve the Federal Government's dissemination of information concerning the small business innovation research program, particularly with regard to program participation by women-owned small business concerns and by socially and economically disadvantaged small business concerns.''

RECOMMENDATIONS OF SECRETARY OF DEFENSE

Section 106 of Pub. L. 102–564 provided that: ''Not later than March 31, 1996, the Secretary of Defense shall submit a recommendation to the Congress addressing whether there has been a demonstrable reduction in the quality of research performed under the SBIR program since the beginning of fiscal year 1993, such that increasing the percentage under section 9(f)(1)(C) of the Small Business Act [15 U.S.C. 638(f)(1)(C)] (as amended by section 103 of this Act) would adversely affect the performance of the research programs of the Department of Defense.''

TIMING OF ISSUANCE OF POLICY DIRECTIVE

Section 202(d) of Pub. L. 102–564 provided that: ''The policy directive required by section 9(p) of the Small Business Act [15 U.S.C. 638(p)] (as added by subsection (c) of this section) shall be published—

''(1) in proposed form (with an opportunity for public comment of not less than 30 days), not later than April 30, 1993; and

''(2) in final form, not later than July 31, 1993.''

SENSE OF CONGRESS CONCERNING AMERICAN-MADE EQUIPMENT AND PRODUCTS

Section 306 of Pub. L. 102–564 provided that:

''(a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—It is the sense of the Congress that an entity that is awarded a funding agreement under the SBIR program of a Federal agency under section 9 of the Small Business Act [15 U.S.C. 638] 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 that program.

''(b) NOTICE TO SBIR AWARDEES.—Each Federal agency that awards funding agreements under the SBIR program shall provide to each recipient of such an award a notice describing the sense of the Congress, as set forth in subsection (a).''

SMALL BUSINESS INNOVATION RESEARCH PROGRAM IN DEPARTMENT OF DEFENSE

Section 4237 of Pub. L. 102–484 provided that:

''(a) EXTENSION OF PROGRAM.—[Amended section 5 of Pub. L. 97–219, set out as a note above.]

''(b) LIMITATION ON PROGRAM AWARDS.—Amounts paid to a small business concern by the Department of Defense under the Small Business Innovation Research Program for a project—

''(1) in phase I under the program may not exceed $100,000; and

''(2) in phase II under the program may not exceed $750,000.

''(c) COMMERCIAL APPLICATIONS STRATEGY.—Not later than 270 days after the date of the enactment of this Act [Oct. 23, 1992], the Secretary of Defense, in consultation with the Administrator of the Small Business Administration, shall develop and issue a strategy for effectuating the transition of successful projects under the Small Business Innovation Research Program from phase II under the program into phase III under the program.

''(d) REPEAL OF EXCLUSION OF CERTAIN ACTIVITIES.—[Amended this section.]

''(e) PERCENTAGE OF REQUIRED EXPENDITURES FOR SBIR CONTRACTS.—(1) The Small Business Innovation Research Program shall apply to the Department of Defense (including the military departments) as if the percentage specified in section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) with respect to fiscal years after fiscal year 1982 were determined in accordance with the table set forth in paragraph (2) (rather than 1.25 percent).

''(2)(A) The percentage under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for any fiscal year for the Department of Defense and each military department shall be determined in accordance with the following table:

| **"For fiscal year:** | **The percentage is:** |
|---|---|
| 1993 | 1.25 |

| "For fiscal year: | The percentage is: |
|---|---|
| 1994 | 1.5 |
| 1995 | 1.75 |
| 1996 | 2.0 |
| 1997 | 2.25 |
| 1998 and thereafter | 2.5. |

''(B) If the determination of the Secretary of Defense under subparagraph (C) is a negative determination (as set forth in that paragraph), then the percentage under section 9(f)(1) of the Small Business Act (15 U.S.C. 638(f)(1)) for the Department of Defense and each military department for fiscal years after fiscal year 1996 shall remain at the level applicable for fiscal year 1996 (notwithstanding the percentages specified in subparagraph (A) for fiscal years after fiscal year 1996).

''(C) Not later than June 30, 1996, the Secretary of Defense during fiscal year 1996 shall determine whether there has been a demonstrable reduction in the quality of research performed under funding agreements awarded by the Department of Defense under the SBIR program since the beginning of fiscal year 1993 such that increasing the percentage under subparagraph (A) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs. If the determination of the Secretary is that there has been such a demonstrable reduction in the quality of research such that increasing the percentage under subparagraph (B) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs, the Secretary shall be considered for purposes of subparagraph (B) to have made a negative determination. The determination of the Secretary concerned under this paragraph shall be made after considering the assessment of the Comptroller General with respect to that department in the report transmitted under subparagraph (D).

''(D) Not later than March 30, 1996, the Comptroller General shall transmit to the Congress and the Secretary of Defense a report setting forth the Comptroller General's assessment, with respect to the Department of Defense of whether there has been a demonstrable reduction in the quality of research performed under funding agreements awarded by the department under the SBIR program since the beginning of fiscal year 1993 such that increasing the percentage under subparagraph (A) for fiscal years after fiscal year 1996 with respect to the department would adversely affect the performance of the department's research programs.

''(E) The results of each determination under subparagraph (C) shall be transmitted to the Congress not later than June 30, 1996.

''(f) DEFINITIONS.—In this section:

''(1) The term 'Small Business Innovation Research Program' means the program established under the following provisions of section 9 of the Small Business Act (15 U.S.C. 638):

''(A) Paragraphs (4) through (7) of subsection (b).

''(B) Subsections (e) through (k).

''(2) The term 'phase I', with respect to the Small Business Innovation Research Program, means the first phase described in subsection (e)(4)(A) of section 9 of the Small Business Act.

''(3) The term 'phase II', with respect to the Small Business Innovation Research Program, means the second phase described in subsection (e)(4)(B) of such section.

''(4) The term 'phase III', with respect to the Small Business Innovation Research Program, means the third phase described in subsection (e)(4)(C) of such section.

''(g) EFFECTIVE DATE.—Subject to subsection (h), this section, and the amendments made by this section, shall take effect on October 1, 1992, and shall apply with respect to fiscal years after fiscal year 1992.

''(h) EFFECTIVENESS OF SECTION CONDITIONAL ON FAILURE TO ENACT OTHER LEGISLATION.—(1) In the event of the enactment of H.R. 4400 or S. 2941 [S. 2941 was enacted into law as Pub. L. 102–564 on Oct. 28, 1992], 102d Congress, on or before the date of the enactment of this Act [Oct. 23, 1992], then this section and the amendments made by this section shall not take effect.

''(2)(A) In the event of the enactment of H.R. 4400 or S. 2941, 102d Congress, after the date of the enactment of this Act, then, effective immediately before the enactment of H.R. 4400 or S. 2941, 102d Congress—

''(i) this section shall cease to be effective; and

''(ii) the provisions of a small business law that are amended by this section shall be effective and read as such provisions of that law were in effect immediately before the enactment of this Act, except that to the extent that any amendment is made to such a provision of a small business law by any other provision of law referred to in subparagraph (B), such provision of a small business law shall be effective and shall read as amended by that other provision of law.

''(B) For the purposes of subparagraph (A)(ii), a provision of law referred to in this subparagraph is the following:

''(i) A provision of this Act other than a provision of this section.

''(ii) A provision of any other Act if the provision takes effect during the period beginning on the date of the enactment of this Act and ending immediately before the enactment of H.R. 4400 or S. 2941, 102d Congress.

''(C) In this paragraph, the term 'small business law' means—

''(i) the Small Business Act (15 U.S.C. 631 et seq.); and

''(ii) the Small Business Innovation Development Act of 1982 [Pub. L. 97–219] (15 U.S.C. 638 note).''

USE OF DEPARTMENT OF AGRICULTURE EXTRAMURAL BUDGET FUNDS IN SMALL BUSINESS INNOVATION RESEARCH PROGRAM

Pub. L. 99–500, § 101(a) [title VI, § 630], Oct. 18, 1986, 100 Stat. 1783, 1783–30, and Pub. L. 99–591, § 101(a) [title VI, § 630], Oct. 30, 1986, 100 Stat. 3341, 3341–30, provided that: ''All funds appropriated for this fiscal year and all funds appropriated hereafter by this or any other Act 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 section 9 of the Small Business Act (15 U.S.C. 638), as amended by the Small Business Innovation Development Act of 1982, Public Law 97–219, shall be available for contracts, grants or cooperative agreements with small business concerns for any purpose in furtherance of the small business innovation research program. Such funds may be transferred for such purpose from one appropriation to another or to a single account.''

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE: SMALL BUSINESS INNOVATION DEVELOPMENT ACT OF 1982

Section 2 of Pub. L. 97–219 provided that:

''(a) The Congress finds that—

''(1) technological innovation creates jobs, increases productivity, competition, and economic growth, and is a valuable counterforce to inflation and the United States balance-of-payments deficit;

''(2) while small business is the principal source of significant innovations in the Nation, the vast majority of federally funded research and development is conducted by large businesses, universities, and Government laboratories; and

''(3) small businesses are among the most cost-effective performers of research and development and are particularly capable of developing research and development results into new products.

''(b) Therefore, the purposes of the Act [amending this section] are—

''(1) to stimulate technological innovation;

''(2) to use small business to meet Federal research and development needs;

''(3) to foster and encourage participation by minority and disadvantaged persons in technological innovation; and

''(4) to increase private sector commercialization innovations derived from Federal research and development.''

REPORTS OF COMPTROLLER GENERAL

Section 105 of title I of Pub. L. 102–564 provided that: ''(a) INTERIM REPORT.—

''(1) IN GENERAL.—The Comptroller General of the United States shall submit to the Congress an interim report concerning the quality of research performed under SBIR program funding agreements entered into during fiscal year 1993 and thereafter. Copies of the interim report shall be furnished to each agency that has participated in the SBIR program in fiscal year 1993 or thereafter.

''(2) CONTENTS OF REPORT.—The Comptroller General shall include in the interim report required under paragraph (1)—

''(A) an assessment of the quality of the research performed under the SBIR program funding agreements entered into by each agency that has participated in the SBIR program beginning in fiscal year 1993 or thereafter, specifically addressing—

''(i) with respect to each such agency, whether or not there has been a demonstrable reduction in research quality; and

''(ii) in the case of such reduction, whether an increase in each such agency's required SBIR participation in accordance with section 9(f)(1) of the Small Business Act [15 U.S.C. 638(f)(1)] (as amended by subsection (b) of this section [probably should be section 103(b) of this Act]) would adversely affect the performance of the agency's research programs;

''(B) an analysis of the program authorized by section 301 of the Small Business Research and Development Enhancement Act of 1992 [amending this section], considering, among other things—

''(i) the extent to which each SBIR agency has implemented the program and the extent to which the program has improved the quality of agency-sponsored research and development;

''(ii) the effect of the program on recipient companies' ability to develop and commercialize technology;

''(iii) the cost of the program and the average cost per recipient company; and

''(iv) the extent to which SBIR companies continue to use the service after completion of the program; and

''(C) such other factors as the Comptroller General may deem appropriate.

''(b) FINAL REPORT.—The Comptroller General of the United States shall transmit to the Congress a final report containing—

''(1) a review of the progress made by Federal agencies in meeting the requirements of section 9(f) of the Small Business Act [15 U.S.C. 638(f)] (as amended by this Act), including increases in expenditures required by that subsection;

''(2) an analysis of participation by small business concerns in the third phase of SBIR programs, including a systematic evaluation of the techniques adopted by Federal agencies to foster commercialization;

''(3) an analysis of the extent to which awards under SBIR programs are made pursuant to section 9(*l*) of the Small Business Act (as added by section 103(h)) in cases in which a program solicitation receives only 1 proposal;

''(4) an analysis of the extent to which awards in the first phase of the SBIR program are made to small business concerns that have received more than 15 second phase awards under the SBIR program in the preceding 5 fiscal years, considering—

''(A) the extent to which such concerns were able to secure Federal or private sector follow-on funding;

''(B) the extent to which the research developed under such awards was commercialized; and

''(C) the amount of commercialization of research developed under such awards, as compared to the amount of commercialization of SBIR research for the entire SBIR program;

''(5) the results of periodic random audits of the extramural budget of each such Federal agency;

''(6) a review of the extent to which the purposes of this title [see Short Title of 1992 Amendments note set out under section 631 of this title] and the Small Business Innovation Development Act of 1982 [see Short Title of 1982 Amendment note set out under section 631 of this title] have been met with regard to fostering and encouraging the participation of women-owned small business concerns and socially and economically disadvantaged small business concerns (as defined in the Small Business Act [15 U.S.C. 631 et seq.]) in technological innovation, in general, and the SBIR program, in particular;

''(7) an analysis of the effectiveness of the SBIR program in promoting the development of the critical technologies identified by the Secretary of Defense and the National Critical Technologies Panel (or its successor), as described in subparagraph 9(j)(2)(E) of the Small Business Act;

''(8) an analysis of the impact of agency application review periods and funding cycles on SBIR program awardees' financial status and ability to commercialize; and

''(9) recommendations to the Congress for tracking the extent to which foreign firms, or United States firms with substantial foreign ownership interests, benefit from technology or products developed as a direct result of SBIR research or research and development.

''(c) DATES OF SUBMISSION.—The report required—

''(1) under subsection (a), shall be submitted to the Congress not later than March 31, 1995; and

''(2) under subsection (b), shall be submitted to the Congress not later than 5 years after the date of enactment of this title [Oct. 28, 1992].''

Section 202(e) of Pub. L. 102–564 provided that: ''Not later than March 31, 1996, the Comptroller General of the United States shall submit a report to the Congress and the head of each agency that is required to make expenditures under the STTR program that—

''(1) sets forth the Comptroller General's assessment, with respect to each such agency, of—

''(A) the quality of research performed under funding agreements awarded by that agency under the STTR program since the beginning of the program;

''(B) whether or not the STTR program has affected the performance of that agency's research programs; and

''(C) the commercial potential of research conducted under the STTR program, if sufficient data is available;

''(2) contains the Comptroller General's assessment as to the effects of the STTR program, if any, on the research quality and goals of the SBIR program; and

''(3) determines the agencies and the federally-funded research and development centers' compliance with the procedures developed under section 9(g)(10) of the Small Business Act [probably 9(*o*)(10); 15 U.S.C. 638(*o*)(10)], as amended by this section.''

Section 6 of Pub. L. 97–219, as amended by Pub. L. 99–443, § 3, Oct. 6, 1986, 100 Stat. 1120; Pub. L. 100–418, title VIII, § 8008, Aug. 23, 1988, 102 Stat. 1561; Pub. L. 100–647, title IX, § 9003, Nov. 10, 1988, 102 Stat. 3808, provided that:

''(a) The Comptroller General, no later than December 31, 1988, shall transmit a report to the appropriate committees of the House of Representatives and of the Senate evaluating the effectiveness to date of phase one and phase two of the SBIR Program as set out in section 9(e)(4) of the Small Business Act [15 U.S.C. 638(e)(4)]. Such report shall examine the quality of the research supported by the SBIR Program compared to that traditionally supported by the affected agencies, and the extent to which the goals of the SBIR Program are being met. Such report shall also include the judgments of the heads of departments and agencies as to

the effect of this Act [amending this section] on research programs.

''(b) The Comptroller General, no later than December 31, 1991, shall transmit to such committees an update of the report mandated under subsection (a). Such report, in addition, shall include an evaluation of phase three of the SBIR Program including a discussion of the aggregate commercial trends for products which are then currently in or have completed phase three of the program.

''(c) Not later than July 1, 1989, the Comptroller General shall transmit to the appropriate committees of the House of Representatives and the Senate recommendations as to the advisability of amending the Small Business Innovation Research program to—

''(1) increase each agency's share of research and development expenditures devoted to it by 0.25 percent per year, until it is 3 percent of the total extramural research and development funds, and targeting a portion of the increment at products with commercialization or export potential;

''(2) make the Small Business Innovation Research program permanent with a formal congressional review every 10 years, beginning in 1993;

''(3) allocate a modest but appropriate share of each agency's Small Business Innovation Research fund for administrative purposes for effective management, quality maintenance, and the elimination of program delays; and

''(4) include within the Small Business Innovation and Research program all agencies expending between $20,000,000 and $100,000,000 in extramural research and development funds annually.''

EX. ORD. NO. 13329. ENCOURAGING INNOVATION IN MANUFACTURING

Ex. Ord. No. 13329, Feb. 24, 2004, 69 F.R. 9181, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, as amended (15 U.S.C. 631 *et seq.*), and to help ensure that Federal agencies properly and effectively assist the private sector in its manufacturing innovation efforts, it is hereby ordered as follows:

SECTION 1. *Policy*. Continued technological innovation is critical to a strong manufacturing sector in the United States economy. The Federal Government has an important role, including through the Small Business Innovation Research (SBIR) and the Small Business Technology Transfer (STTR) programs, in helping to advance innovation, including innovation in manufacturing, through small businesses.

SEC. 2. *Duties of Department and Agency Heads*. The head of each executive branch department or agency with one or more SBIR programs or one or more STTR programs shall:

(a) to the extent permitted by law and in a manner consistent with the mission of that department or agency, give high priority within such programs to manufacturing-related research and development to advance the policy set forth in section 1 of this order; and

(b) submit reports annually to the Administrator of the Small Business Administration and the Director of the Office of Science and Technology Policy concerning the efforts of such department or agency to implement subsection 2(a) of this order.

SEC. 3. *Duties of Administrator of the Small Business Administration*. The Administrator of the Small Business Administration:

(a) shall establish, after consultation with the Director of the Office of Science and Technology Policy, formats and schedules for submission of reports by the heads of departments and agencies under subsection 2(b) of this order; and

(b) is authorized to issue to departments and agencies guidelines and directives (in addition to the formats and schedules under subsection 3(a)) as the Administrator determines from time to time are necessary to implement subsection 2(a) of this order, after such guidelines and directives are submitted to the President, through the Director of the Office of Science and Technology Policy, for approval and are approved by the President.

SEC. 4. *Definitions*. As used in this order:

(a) ''Small Business Innovation Research (SBIR) program'' means a program to which section 9(e)(4) of the Small Business Act (15 U.S.C. 638(e)(4)) refers;

(b) ''Small Business Technology Transfer (STTR) program'' means a program to which section 9(e)(6) of the Small Business Act (15 U.S.C. 638(e)(6)) refers;

(c) ''research and development'' means an activity set forth in section 9(e)(5) of the Small Business Act (15 U.S.C. 638(e)(5)); and

(d) ''manufacturing-related'' means relating to: (i) manufacturing processes, equipment and systems; or (ii) manufacturing workforce skills and protection.

SEC. 5. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect the authority of the Director of the Office of Management and Budget with respect to budget, administrative, or legislative proposals.

(b) Nothing in this order shall be construed to require disclosure of information the disclosure of which is prohibited by law or by Executive Order, including Executive Order 12958 of April 17, 1995, as amended [50 U.S.C. 435 note].

(c) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

GEORGE W. BUSH.

## § 639. Reporting requirements and agency cooperation

### (a) Annual reports to President and Congressional officers and committees

The Administration shall, as soon as practicable each fiscal year make a comprehensive annual report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives. Such report shall include a description of the state of small business in the Nation and the several States, and a description of the operations of the Administration under this chapter, including, but not limited to, 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. Such report shall contain recommendations for strengthening or improving such programs, or, when necessary or desirable to implement more effectively congressional policies and proposals, for establishing new or alternative programs. In addition, such report shall include the names of the business concerns to whom contracts are let and for whom financing is arranged by the Administration, together with the amounts involved. With respect to minority small business concerns, the report shall include the proportion of loans and other assistance under this chapter provided to such concerns, the goals of the Administration for the next fiscal year with respect to such concerns, and recommendations for improving assistance to minority small business concerns under this chapter.

**(b) Report of expenditures in conduct of activities; contents; information to Congressional committees**

The Administration shall make a report to the President, the President of the Senate, and the Speaker of the House of Representatives, to the Senate Select Committee on Small Business and to the Committee on Small Business of the House of Representatives, as soon as practicable each fiscal year, showing as accurately as possible for each such period the amount of funds appropriated to it that it has expended in the conduct of each of its principal activities such as lending, procurement, contracting, and providing technical and managerial aids. Such report shall contain 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 this this[1] chapter. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 636(a) of this title and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives.

**(c) Repealed. Pub. L. 104–66, title I, § 1091(f), Dec. 21, 1995, 109 Stat. 722**

**(d) Annual report of Department of Defense**

For the purpose of aiding in carrying out the national policy to insure that a fair proportion of the total purchases and contracts for property and services for the Government be placed with small-business enterprises, and to maintain and strengthen the overall economy of the Nation, the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives, showing the amount of funds appropriated to the Department of Defense which have been expended, obligated, or contracted to be spent with small business concerns and the amount of such funds expended, obligated, or contracted to be spent with firms other than small business in the same fields of operation; and such reports shall show separately the funds expended, obligated, or contracted to be spent for basic and applied scientific research and development.

**(e) Retention of records**

(1)[2] The Administration and the Inspector General of the Administration shall retain all correspondence, records of inquiries, memoranda, reports, books, and records, including memoranda as to all investigations conducted by or for the Administration, for a period of at least one year from the date of each thereof, and shall at all times keep the same available for inspection and examination by the Senate Select Committee on Small Business and the Committee on Small Business of the House of Representatives, or their duly authorized representatives.

(2) The Committee on Small Business of either the Senate or the House of Representatives may request that the Office of the Inspector General of the Administration conduct an investigation of any program or activity conducted under the authority of section 636(j) or 637(a) of this title. Not later than thirty days after the receipt of such a request, the Inspector General shall inform the committee, in writing, of the disposition of the request by such office.

**(f) Consultation and cooperation with Government departments and agencies**

To the extent deemed necessary by the Administrator to protect and preserve small-business interests, the Administration shall consult and cooperate with other departments and agencies of the Federal Government in the formulation by the Administration of policies affecting small-business concerns. When requested by the Administrator, each department and agency of the Federal Government shall consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small-business concerns, in order to insure that small-business interests will be recognized, protected, and preserved. This subsection shall not require any department or agency to consult or cooperate with the Administration in any case where the head of such department or agency determines that such consultation or cooperation would unduly delay action which must be taken by such department or agency to protect the national interest in an emergency.

**(g) Annual report of employee conduct complaints received or acted upon and investigations undertaken by Administration**

The Administration shall transmit, not later than December 31 of each year, to the Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives a sealed report with respect to—

(1) complaints alleging illegal conduct by employees of the Administration which were received or acted upon by the Administration during the preceding fiscal year; and

(2) investigations undertaken by the Administration, including external and internal audits and security and investigation reports.

**(h) Report to Congress on secondary market operations**

The Administration shall transmit, not later than March 31 of each year, to the Committees on Small Business of the Senate and House of Representatives a report on the secondary market operations during the preceding calendar year. This report shall include, but not be limited to, (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,

[1] So in original.

[2] Paragraph designation ''(1)'' supplied editorially.

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 in (1) through (7) to assess small businesses' access to capital at reasonable rates and terms as a result of secondary market operations.

(Pub. L. 85–536, § 2[10], July 18, 1958, 72 Stat. 393; Pub. L. 87–305, § 5(a), Sept. 26, 1961, 75 Stat. 666; Pub. L. 89–348, § 1(3), Nov. 8, 1965, 79 Stat. 1310; Pub. L. 93–237, § 7, Jan. 2, 1974, 87 Stat. 1025; Pub. L. 93–386, § 4, Aug. 23, 1974, 88 Stat. 746; Pub. L. 93–608, § 3(4), (5), Jan. 2, 1975, 88 Stat. 1972; Pub. L. 95–89, title II, §§ 203–208, 211, Aug. 4, 1977, 91 Stat. 557, 558; Pub. L. 95–315, § 6, July 4, 1978, 92 Stat. 379; Pub. L. 97–35, title XIX, § 1904, Aug. 13, 1981, 95 Stat. 772; Pub. L. 98–352, § 4, July 10, 1984, 98 Stat. 331; Pub. L. 100–656, title IV, § 406, Nov. 15, 1988, 102 Stat. 3876; Pub. L. 101–37, § 15, June 15, 1989, 103 Stat. 73; Pub. L. 101–574, title II, § 241, Nov. 15, 1990, 104 Stat. 2826; Pub. L. 104–66, title I, § 1091(f), Dec. 21, 1995, 109 Stat. 722.)

PRIOR PROVISIONS

Prior similar provisions were contained in sections 211 and 215 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, 238, as amended by act Aug. 9, 1955, ch. 628, §§ 6, 10, 11, 69 Stat. 550, 551, which were previously classified to sections 640 and 644 of this title. The provisions of section 210 of act July 30, 1953, formerly classified to this section, were transferred to section 2 [8] of Pub. L. 85–536, and are classified to section 637(b)(2) of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

1995—Subsec. (c). Pub. L. 104–66 struck out subsec. (c) which related to surveys, and their corresponding reports and recommendations, for the determination of factors tending to injure small businesses.

1990—Subsec. (d). Pub. L. 101–574 substituted ''the Department of Defense shall make an annual report to the Committees on Small Business of the Senate and the House of Representatives'' for ''the Department of Defense shall make a monthly report to the President, the President of the Senate, the Senate Select Committee on Small Business, and the Speaker of the House of Representatives not less than 45 [''forty-five'' in original text] days after the close of the month'', ''small business concerns'' for ''small-business concerns'', and ''such reports'' for ''such monthly reports''.

1989—Subsec. (e)(2). Pub. L. 101–37 substituted '', of the disposition of the request'' for ''of the disposition of the matter''.

1988—Subsec. (e). Pub. L. 100–656 inserted ''and the Inspector General of the Administration'' after ''Administration'', which was executed by making the insertion after the first reference to ''Administration'', and added par. (2).

1984—Subsec. (h). Pub. L. 98–352 added subsec. (h).

1981—Subsec. (b). Pub. L. 97–35 substituted ''this chapter. Such report shall provide such information separately on each type of loan made under paragraphs (10) through (15) of section 636(a) of this title and separately for all other loan programs. In addition, the information on loans shall be supplied on a monthly basis to the Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives'' for ''this subsection, and on the projected and actual energy savings and numbers of jobs created by firms through loans made under section 636(*l*) of this title. The Department of Energy shall assist the Administration in obtaining information and compiling this report''.

1978—Subsec. (b). Pub. L. 95–315 inserted provisions requiring the report to contain number and amount of loans, applications for loans, etc.

1977—Subsec. (a). Pub. L. 95–89, §§ 203, 211, included the Senate Select Committee on Small Business as an additional recipient of the annual report and provided for the contents of the report as it relates to minority small business concerns.

Subsec. (b). Pub. L. 95–89, § 204, substituted ''Committee on Small Business of the House of Representatives'' for ''House Select Committee to Conduct a Study and Investigation of the Problems of Small Business''.

Subsec. (c)(2). Pub. L. 95–89, § 205, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (d). Pub. L. 95–89, § 206, included the Senate Select Committee on Small Business as an additional recipient of the required reports.

Subsec. (e). Pub. L. 95–89, § 207, substituted ''Committee on Small Business of the House of Representatives'' for ''House Select Committee To Conduct a Study and Investigation of the Problems of Small Business''.

Subsec. (g). Pub. L. 95–89, § 208, substituted ''Senate Select Committee on Small Business and Committee on Small Business of the House of Representatives'' for ''Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking and Currency of the House of Representatives''.

1975—Subsec. (a). Pub. L. 93–608, § 3(4), substituted ''fiscal'' for ''calendar'' in two places and struck out provisions requiring report to contain information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation and other information deemed appropriate by the Administration.

Subsec. (b). Pub. L. 93–608, § 3(5), substituted ''as soon as practicable each fiscal year'' for ''on December 31 of each year''.

1974—Subsec. (a). Pub. L. 93–237 substituted provisions requiring the Administration to make comprehensive annual reports to the President and Congressional Officers as soon as practicable describing the state of the small business in the Nation and the States, the operations of the Administration, and recommendations for legislation, for provisions requiring the Administration to make reports on Dec. 31 of each year to the President and Congressional Officers.

Subsec. (g). Pub. L. 93–386 added subsec. (g).

1965–Subsec. (a). Pub. L. 89–348 repealed provision of subsec. (a) which required as part of the annual report to the President and to Congress by the Small Business Administration, a report on the progress in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation.

1961—Subsec. (a). Pub. L. 87–305, § 5(a)(1), changed the reporting requirements from semiannual to annual basis and required the inclusion of information on the progress of the Administration in liquidating the assets and winding up the affairs of the Reconstruction Finance Corporation, such requirement to be in lieu of progress reports on a quarterly basis.

Subsec. (b). Pub. L. 87–305, § 5(a)(2), struck out ''June 30 and'' before ''December 31''.

Subsec. (c). Pub. L. 87–305, § 5(a)(3), designated existing provisions of first and second sentences as pars. (1) and (2), substituted ''direct'' for ''request'' and ''promote undue concentration of economic power, or otherwise injure small business'' for ''injure small business, or otherwise promote undue concentration of economic power in the course of the administration of this chapter'' and inserted ''of any activity of the Government which may affect small business,'' after ''surveys'' in par. (1) and required reports to be made not less than once every year in par. (2).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001. Previously, Select

Committee on Small Business of Senate became Committee on Small Business of Senate. See Senate Resolution No. 101, Ninety-Seventh Congress, Mar. 25, 1981.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97–35 effective Aug. 13, 1981, but shall not affect any financing made, obligated, or committed under this chapter or chapter 14B of this title prior to Aug. 13, 1981, see section 1918 of Pub. L. 97–35, set out as a note under section 631 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsecs. (a), (b), and (d) of this section relating to submitting annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and pages 64 and 191 of House Document No. 103–7.

SMALL BUSINESS ADMINISTRATION PROGRAM DATA AND EVALUATION; REPORT; IMPLEMENTATION

Pub. L. 100–590, title I, § 109, Nov. 3, 1988, 102 Stat. 2994, provided that: ''The Small Business Administration shall develop a comprehensive system to systematically acquire data on the number of small businesses which participate in Administration programs, the nature and extent of their participation, the type of business, the results of such participation, and such other information as the Administration deems appropriate. It shall also include the number and dollar amount of guaranteed loans by lender, and the interest rate thereon, and the number and dollar amount of sales in the secondary market both by lender and by purchaser. The data shall be compiled and maintained to permit a statistically valid analysis and computation and evaluation of costs and benefits. The Administration shall submit a report to the Small Business Committees of the Senate and the House of Representatives not later than March 31, 1989, such report to include its conclusions and recommendations and estimate of the costs involved in implementing such a program and shall implement the system for all program assistance made available on or after October 1, 1989.''

EX. ORD. NO. 11518. INCREASED REPRESENTATION OF INTERESTS OF SMALL BUSINESS CONCERNS BEFORE GOVERNMENT DEPARTMENTS AND AGENCIES

Ex. Ord. No. 11518, Mar. 20, 1970, 35 F.R. 4939, provided:

WHEREAS the policy of the Government of the United States is to insure the continuance of a strong and healthy free enterprise system; and

WHEREAS the existence of a strong and healthy free enterprise system is directly related to the well being and competitive strength of small business concerns and their opportunities for free entry into business, growth, and expansion; and

WHEREAS the departments and agencies of the United States Government exercise, through their regulatory and other programs and practices, a significant influence on the well being and competitive strength of business concerns, particularly minority-owned business concerns, and their opportunities for free entry into business, growth and expansion; and

WHEREAS members of minority groups traditionally have aspired to own their own businesses and thereby to participate in our free enterprise system; and

WHEREAS members of certain minority groups through no fault of their own have been denied the full opportunity to achieve these aspirations; and

WHEREAS the policy of the Executive Branch of the United States Government continues to be, as was described by President Dwight D. Eisenhower, ''to strive to eliminate obstacles to the growth of small business''; and

WHEREAS the Small Business Act (72 Stat. 384, 15 U.S.C. 631) declares the Congressional policy that the United States Government should aid, counsel, assist and protect, insofar as is possible, the interests of small business concerns; and

WHEREAS the Small Business Administration is the agency within the Executive Branch of the United States Government especially responsible for and with an established program of advocacy in matters relating to small business; and

WHEREAS section 8(b)(12) of the Small Business Act (72 Stat. 391, 15 U.S.C. 637(b)(12)) empowers the Small Business Administration to consult and cooperate with all Government agencies for the purpose of insuring that small business concerns receive fair and reasonable treatment from such agencies, and section 10(f) of that Act (72 Stat. 393, 15 U.S.C. 639(f)) requires each department and agency of the Federal Government, when requested by the Administrator of the Small Business Administration, to consult and cooperate with the Administration in the formulation by such department or agency of policies affecting small business concerns, in order to insure that small business interests will be recognized, protected, and preserved:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the Small Business Act, it is ordered as follows:

SECTION 1. The Small Business Administration, as the spokesman for and advocate of the small business community, shall advise and counsel small business concerns in their dealings with the departments and agencies of the United States Government to the end that the views of small business concerns will be fully heard, their rights fully protected, and their valid interests fully advanced.

SEC. 2. Departments and agencies of the Executive Branch of the United States Government shall call upon the Small Business Administration for advice, guidance, and assistance when considering matters which reasonably can be construed as materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. In taking action on such matters, these departments and agencies shall act in a manner calculated to advance the valid interests of small business concerns.

SEC. 3. The Small Business Administration, whenever it determines that the valid interests of small business concerns so warrant, shall take such action as may be appropriate to insure the timely presentation to departments and agencies of the United States Government of matters materially affecting the well being or competitive strength of small business concerns or their opportunities for free entry into business, growth, or expansion. To this end, the Small Business Administration may participate in investigations, hearings, or other proceedings pending before such departments or agencies and submit evidence, briefs, and arguments in accordance with, and to the extent permitted by, the department's or agency's rules of practice and procedure.

SEC. 4. In performing the responsibilities and duties placed on it by this order, the Small Business Administration shall particularly consider the needs and interests of minority-owned small business concerns and of members of minority groups seeking entry into the business community.

SEC. 5. Nothing in this order shall be construed to authorize the Small Business Administration to act as an attorney for an individual concern in any investigation, hearing, or other proceeding pending before any department or agency of the United States Government. Nothing in this order shall be construed to subject any department or agency to the authority of any other department or agency, to affect the present authority of any department or agency to participate in the proceedings of another department or agency, or to affect the authority of the Attorney General under 28 U.S.C. 519.

SEC. 6. The term ''small business concern'' as used in this order shall have the same meaning as in the Small Business Act.

RICHARD NIXON.

### § 639a. Review of loan program; submission of estimated needs for additional authorization

It is the sense of the Congress that the regular business loan program of the Small Business Administration should be reviewed by the Congress at least once every two years. It is further the sense of the Congress that the Small Business Administration should submit its estimated needs for additional authorization for such program to the Congress at least one year in advance of the date on which such authorization is to be provided, in order to assure an orderly and recurring review of such program and to avoid emergency appeals for additional authorization. Compliance by the Small Business Administration with the foregoing policy will enable the Congress on and after July 25, 1962, to provide additional authorization for such program on a two-year basis.

(Pub. L. 87–550, § 1(b), July 25, 1962, 76 Stat. 221.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

### § 640. Voluntary agreements among small-business concerns

#### (a) Consultation with President

The President is authorized to consult with representatives of small-business concerns with a view to encouraging the making by such persons with the approval of the President of voluntary agreements and programs to further the objectives of this chapter.

#### (b) Exemption from certain laws; findings and requests; filing and publication

No act or omission to act pursuant to this chapter which occurs while this chapter is in effect, if requested by the President pursuant to a voluntary agreement or program approved under subsection (a) of this section and found 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.] of the United States. A copy of each such request intended to be within the coverage of this section, and any modification or withdrawal thereof, shall be furnished to the Attorney General and the Chairman of the Federal Trade Commission when made, and it shall be published in the Federal Register unless publication thereof would, in the opinion of the President, endanger the national security.

#### (c) Delegation of authority; consultation; approval of requests

The authority granted in subsection (b) of this section shall be delegated only (1) to an official who shall for the purpose of such delegation be required to be appointed by the President by and with the advice and consent of the Senate, (2) upon the condition that such official consult with the Attorney General and the Chairman of the Federal Trade Commission not less than ten days before making any request or finding thereunder, and (3) upon the condition that such official obtain the approval of the Attorney General to any request thereunder before making the request.

#### (d) Inapplicability of section when request or finding withdrawn

Upon withdrawal of any request or finding hereunder, or upon withdrawal by the Attorney General of his approval of the voluntary agreement or program on which the request or finding is based, the provisions of this section shall not apply to any subsequent act, or omission to act, by reason of such finding or request.

(Pub. L. 85–536, § 2[11], July 18, 1958, 72 Stat. 394.)

REFERENCES IN TEXT

The antitrust laws, referred to in subsec. (b), are classified generally to chapter 1 (§ 1 et seq.) of this title.

The Federal Trade Commission Act, referred to in subsec. (b), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of this title. For complete classification of this Act to the Code, see section 58 of this title and Tables.

PRIOR PROVISIONS

Prior similar provisions were contained in section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 646 of this title. The provisions of section 211 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85–536, and are classified to section 639(d), (f) of this title. See Codification note set out under section 631 of this title.

EX. ORD. NO. 10493. DELEGATION OF FUNCTIONS

Ex. Ord. No. 10493, Oct. 14, 1953, 18 F.R. 6583, provided:

SECTION 1. The functions conferred upon the President by section 217 of the Small Business Act of 1953 [covered by this section] are hereby delegated to the Administrator of the Small Business Administration and shall be carried out as provided in the said section 217.

SEC. 2. There is hereby delegated to the Administrator of the Small Business Administration so much of the functions conferred upon the President by section 708 of the Defense Production Act of 1950, as amended [section 2158 of Title 50, Appendix, War and National Defense], as necessary to effect changes in the composition of, or to take other action respecting voluntary agreements and programs relating to, small-business production pools approved prior to July 31, 1953, pursuant to the said section 708 [section 2158 of Title 50, Appendix]: *Provided*, That this section shall not be construed as limiting the authority of the Director of the Office of Defense Mobilization under Executive Order No. 10480 of August 14, 1953 (18 F.R. 4939) [formerly set out as a note under section 2153 of Title 50, Appendix]. The functions delegated to the Administrator by this section shall be carried out as provided in section 708 of the Defense Production Act of 1950, as amended [section 2158 of Title 50, Appendix].

SEC. 3. Without prejudice to any action taken thereunder, Executive Order No. 10370 of July 7, 1952 (17 F.R. 6141), is hereby revoked.

DWIGHT D. EISENHOWER.

### § 641. Transfer to Administration of other functions, powers, and duties

The President may transfer to the Administration any functions, powers, and duties of any department or agency which relate primarily to small-business problems. In connection with any

such transfer, the President may provide for appropriate transfers of records, property, necessary personnel, and unexpended balances of appropriations and other funds available to the department or agency from which the transfer is made.

(Pub. L. 85–536, § 2[12], July 18, 1958, 72 Stat. 394.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 218 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, as amended by act Aug. 9, 1955, ch. 628, § 12, 69 Stat. 551, which was previously classified to section 647 of this title. The provisions of section 212 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, and are classified to section 637(b) of this title. See Codification note set out under section 631 of this title.

EXECUTIVE ORDER NO. 10504

Ex. Ord. No. 10504, Dec. 1, 1953, 18 F.R. 7667, which provided for the transfer of functions of the Small Defense Plants Administration to the Small Business Administrator, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

EXECUTIVE ORDER NO. 11871

Ex. Ord. No. 11871, July 18, 1975, 40 F.R. 30915, which transferred the functions of ACTION Agency relating to the Service Corps of Retired Executives and Active Corps of Executives to the Small Business Administration, was revoked by Ex. Ord. No. 12553, Feb. 25, 1986, 51 F.R. 7237.

### § 642. Requirements for loans

No loan shall be made or equipment, facilities, or services furnished by the Administration under this chapter to any business enterprise unless the owners, partners, or officers of such business enterprise (1) certify to the Administration the names of any attorneys, agents, or other persons engaged by or on behalf of such business enterprise for the purpose of expediting applications made to the Administration for assistance of any sort, and the fees paid or to be paid to any such persons; (2) execute an agreement binding any such business enterprise for a period of two years after any assistance is rendered by the Administration to such business enterprise, to refrain from employing, tendering any office or employment to, or retaining for professional services, any person who, on the date such assistance or any part thereof was rendered, or within one year prior thereto, shall have served as an officer, attorney, agent, or employee of the Administration occupying a position or engaging in activities which the Administration shall have determined involve discretion with respect to the granting of assistance under this chapter; and (3) furnish the names of lending institutions to which such business enterprise has applied for loans together with dates, amounts, terms, and proof of refusal.

(Pub. L. 85–536, § 2[13], July 18, 1958, 72 Stat. 394.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 219 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, which was previously classified to section 648 of this title. The provisions of section 213 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, and are classified to section 637(b)(6), (7) of this title. See Codification note set out under section 631 of this title.

### § 643. Fair charge for use of Government-owned property

To the fullest extent the Administration deems practicable, it shall make a fair charge for the use of Government-owned property and make and let contracts on a basis that will result in a recovery of the direct costs incurred by the Administration.

(Pub. L. 85–536, § 2[14], July 18, 1958, 72 Stat. 395.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 220 of act July 30, 1953, ch. 282, title II, 67 Stat. 240, which was previously classified to section 649 of this title. The provisions of section 214 of act July 30, 1953, formerly classified to this section, were transferred to section 2[15] of Pub. L. 85–536, and are classified to section 644 of this title. See Codification note set out under section 631 of this title.

### § 644. Awards or contracts

#### (a) Determination

To effectuate the purposes of this chapter, small-business concerns within the meaning of this chapter shall receive any award or contract or any part thereof, and be awarded any contract for the sale of Government property, as to which it is determined by the Administration and the contracting procurement or disposal agency (1) to be in the interest of maintaining or mobilizing the Nation's full productive capacity, (2) to be in the interest of war or national defense programs, (3) to be in the interest of assuring 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) to be in the interest of assuring that a fair proportion of the total sales of Government property be made to small-business concerns; but nothing contained in this chapter shall be construed to change any preferences or priorities established by law with respect to the sale of electrical power or other property by the Government or any agency thereof. These determinations may be made for individual awards or contracts or for classes of awards or contracts. If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) 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, (2) why delivery schedules

cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, (4) why construction cannot be procured as separate discrete projects, or (5) why the agency has determined that the bundled contract (as defined in section 632(*o*) of this title) is necessary and justified. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities. Whenever the Administration and the contracting procurement agency fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator. For purposes of clause (3) of the first sentence of this subsection, an industry category is a discrete group of similar goods and services. Such groups shall be determined by the Administration 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 Administration shall limit such an industry category to a greater extent than provided under such classification codes if the Administration receives evidence indicating that further segmentation for purposes of this paragraph is warranted due to special capital equipment needs or special labor or geographic requirements or to recognize a new industry. A market for goods or services may not be segmented under the preceding sentence due to geographic requirements unless the Government typically designates the area where work for contracts for such goods or services is to be performed and Government purchases comprise the major portion of the entire domestic market for such goods or services and, 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 of the general areas where such concerns are located. A contract may not be awarded under this subsection if the award of the contract would result in a cost to the awarding agency which exceeds a fair market price.

**(b) Placement of contracts by contracting procurement agency**

With respect to any work to be performed the amount of which would exceed the maximum amount of any contract for which a surety may be guaranteed against loss under section 694b 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 such work.

**(c) Programs for blind and handicapped individuals**

(1) As used in this subsection:

(A) The term ''Committee'' means the Committee for Purchase From People Who Are Blind or Severely Disabled established under section 46 of title 41.

(B) The term ''public or private organization for the handicapped'' has the same meaning given such term in section 632(e) of this title.

(C) The term ''handicapped individual'' has the same meaning given such term in section 632(f) of this title.

(2)(A) During fiscal year 1995, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount not to exceed $40,000,000.

(B) None of the amounts authorized for participation by subparagraph (A) may be placed on the procurement list maintained by the Committee pursuant to section 47 of title 41.

(3) The Administrator shall monitor and evaluate such participation.

(4)(A) Not later than ten days after the announcement of a proposed award of a contract by an agency or department to a public or private organization for the handicapped, 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.

(B) If such a concern files an appeal of a proposed award under subparagraph (A) and the Administrator, after consultation with the Executive Director of the Committee, finds that the concern has experienced or is likely to experience severe economic injury as the result of the proposed award, not later than thirty days after the filing of the appeal, the Administration shall require each agency and department having procurement powers to take such action as may be appropriate to alleviate economic injury sustained or likely to be sustained by the concern.

(5) Each agency and department having procurement powers shall report to the Office of Federal Procurement Policy each time a contract subject to paragraph (2)(A) is entered into, and shall include in its report the amount of the next higher bid submitted by a for-profit small business concern. The Office of Federal Procurement Policy shall collect data reported under the preceding sentence through the Federal procurement data system and shall report to the Administration which shall notify all such agencies and departments when the maximum amount of awards authorized under paragraph (2)(A) has been made during any fiscal year.

(6) For the purpose of this subsection, a contract may be awarded only if at least 75 per centum of the direct labor performed on each item being produced under the contract in the sheltered workshop or performed in providing each type of service under the contract by the sheltered workshop is performed by handicapped individuals.

(7) Agencies awarding one or more contracts to such an organization pursuant to the provi-

sions of this subsection may use multiyear contracts, if appropriate.

**(d) Priority**

For purposes of this section priority shall be given to the awarding of contracts and the placement of subcontracts to small business concerns which shall perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas. Notwithstanding any other provision of law, total labor surplus area setasides pursuant to Defense Manpower Policy Number 4 (32A C.F.R. Chapter 1) or any successor policy shall be authorized if the Secretary or his designee 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. As soon as practicable and to the extent possible, in determining labor surplus areas, consideration shall be given to those persons who would be available for employment were suitable employment available. Until such definition reflects such number, the present criteria of such policy shall govern.

**(e) Procurement strategies; contract bundling**

**(1) In general**

To the maximum extent practicable, procurement strategies used by the various agencies having contracting authority shall facilitate the maximum participation of small business concerns as prime contractors, subcontractors, and suppliers.

**(2) Market research**

**(A) In general**

Before proceeding with an acquisition strategy that could lead to a contract containing consolidated procurement requirements, the head of an agency shall conduct market research to determine whether consolidation of the requirements is necessary and justified.

**(B) Factors**

For purposes of subparagraph (A), consolidation of the requirements may be determined as being necessary and justified if, as compared to 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. Benefits described in the preceding sentence may include the following:

(i) Cost savings.

(ii) Quality improvements.

(iii) Reduction in acquisition cycle times.

(iv) Better terms and conditions.

(v) Any other benefits.

**(C) Reduction of costs not determinative**

The 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 relation to the dollar value of the procurement requirements to be consolidated.

**(3) Strategy specifications**

If the head of a contracting agency determines that a proposed procurement strategy for a procurement involves a substantial bundling of contract requirements, the proposed procurement strategy shall—

(A) identify specifically the benefits anticipated to be derived from the bundling of contract requirements;

(B) 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

(C) include a specific determination that the anticipated benefits of the proposed bundled contract justify its use.

**(4) Contract teaming**

In the case of a solicitation of offers for a bundled contract that is issued by the head of an 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. The head of the agency shall evaluate the offer in the same manner as other offers, with due consideration to the capabilities of all of the proposed subcontractors. If a small business concern teams under this paragraph, it shall not affect its status as a small business concern for any other purpose.

**(f) Repealed. Pub. L. 103–355, title VII, § 7101(a), Oct. 13, 1994, 108 Stat. 3367**

**(g) Goals for participation of small business concerns in procurement contracts**

(1) The President shall annually establish Government-wide goals for procurement contracts awarded to small business concerns, small business concerns owned and controlled by service disabled[1] veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women. The Government-wide 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. The Government-wide 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. The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract

[1] So in original. Probably should be ''service-disabled''.

awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter. The Government-wide 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. The Government-wide 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. Notwithstanding the Government-wide goal, each agency shall have an annual goal that presents, for that agency, the maximum practicable opportunity for small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to participate in the performance of contracts let by such agency. The Administration and the Administrator of the Office of Federal Procurement Policy shall, when exercising their authority pursuant to paragraph (2), insure that the cumulative annual prime contract goals for all agencies meet or exceed the annual Government-wide prime contract goal established by the President pursuant to this paragraph.

(2) The head of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women in procurement contracts of such agency. Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women to perform such contracts and to perform subcontracts under such contracts. Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination. For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women. The head of each Federal agency, in attempting to attain such participation, shall consider—

(A) contracts awarded as the result of unrestricted competition; and

(B) contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 637(a) of this title.

**(h) Reports to Administration; submittal of information to Congress**

(1) At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns, small business concerns owned and controlled by veterans (including service-disabled veterans), qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section.

(2) The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and shall submit them to the President and the Congress. The Administration's submission to the President shall include the following:

(A) The Government-wide goals for participation by small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women and the performance in attaining such goals.

(B) The goals in effect for each agency and the agency's performance in attaining such goals.

(C) An analysis of any failure to achieve the Government-wide goals or any individual agency goals and the actions planned by such agency (and approved by the Administration) to achieve the goals in the succeeding fiscal year.

(D) The number and dollar value of contracts awarded to small business concerns, small business concerns owned and controlled by service-disabled veterans, qualified HUBZone small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women 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, qualified HUBZone small business concerns, and

(iv) unrestricted competitions,

for each agency and on a Government-wide basis.

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

(F) The number and dollar value of prime contracts and subcontracts awarded to small business concerns owned and controlled by women.

(3) The President shall include the information required by paragraph (2) in each annual report to the Congress on the state of small business prepared pursuant to section 631b(a) of this title.

**(i) Small business set-asides**

Nothing in this chapter or any other provision of law precludes exclusive small business set-asides for procurements of architectural and engineering services, research, development, test and evaluation, and each Federal agency is authorized to develop such set-asides to further the interests of small business in those areas.

**(j) Small business reservation**

(1) Each contract for the purchase of goods and services 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 two or more small business concerns that are competitive with market prices and are competitive with regard to the quality and delivery of the goods or services being purchased.

(2) In carrying out paragraph (1), a contracting officer shall consider a responsive offer timely received from an eligible small business offeror.

(3) Nothing in paragraph (1) shall be construed as precluding an award of a contract with a value not greater than $100,000 under the authority of subsection (a) of section 637 of this title, section 2323 of title 10, section 712 of the Business Opportunity Development Reform Act of 1988 (Public Law 100–656; 15 U.S.C. 644 note), or section 7102 of the Federal Acquisition Streamlining Act of 1994.

**(k) Office of Small and Disadvantaged Business Utilization; Director**

There is hereby established in each Federal agency having procurement powers an office to be known as the ''Office of Small and Disadvantaged Business Utilization''. The management of each such office shall be vested in an officer or employee of such agency who shall—

(1) be known as the ''Director of Small and Disadvantaged Business Utilization'' for such agency,

(2) be appointed by the head of such agency,

(3) be responsible only to, and report directly to, the head of such agency or to the deputy of such head, except that the director for the Office of the Secretary of Defense shall be responsible only to, and report directly to, such Secretary or the Secretary's designee,

(4) be responsible for the implementation and execution of the functions and duties under this section and section 637 of this title which relate to such agency,

(5) identify proposed solicitations that involve significant bundling of contract requirements, and work with the agency acquisition officials and the Administration to revise the procurement strategies for such proposed solicitations where appropriate to increase the probability of participation by small businesses as prime contractors, or to facilitate small business participation as subcontractors and suppliers, if a solicitation for a bundled contract is to be issued;

(6) assist small business concerns to obtain payments, required late payment interest penalties, or information regarding payments due to such 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 such Government-wide regulation,

(7) have supervisory authority over personnel of such agency to the extent that the functions and duties of such personnel relate to functions and duties under this section and section 637 of this title,

(8) assign a small business technical adviser to each office to which the Administration has assigned a procurement center representative—

(A) who shall be a full-time employee of the procuring activity and shall be well qualified, technically trained and familiar with the supplies or services purchased at the activity, and

(B) whose principal duty shall be to assist the Administration procurement center representative in his duties and functions relating to this section and section 637 of this title,

(9) cooperate, and consult on a regular basis, with the Administration with respect to carrying out the functions and duties described in paragraph (4) of this subsection, and

(10) make recommendations to contracting officers as to whether a particular contract requirement should be awarded pursuant to subsection (a) of this section, or section 637(a) of this title or section 2323 of title 10. Such recommendations shall be made with due regard to the requirements of subsection (m) of this section, and the failure of the contracting officer to accept any such recommendations shall be documented and included within the appropriate contract file.

This subsection shall not apply to the Administration.

***(l)* Breakout procurement center representatives**

(1) The Administration shall assign to each major procurement center a breakout procurement center representative with such assistance

as may be appropriate. The breakout procurement center representative shall carry out the activities described in paragraph (2), and shall be an advocate for the breakout of items for procurement through full and open competition, whenever appropriate, while maintaining the integrity of the system in which such items are used, and an advocate for the use of full and open competition, whenever appropriate, for the procurement of supplies and services by such center. Any breakout procurement center representative assigned under this subsection shall be in addition to the representative referred to in subsection (k)(6) of this section.

(2) In addition to carrying out the responsibilities assigned by the Administration, a breakout procurement center representative is authorized to—

(A) attend any provisioning conference or similar evaluation session during which determinations are made as to whether requirements are to be procured through other than full and open competition and make recommendations with respect to such requirements to the members of such conference or session;

(B) review, at any time, restrictions on competition previously imposed on items through acquisition method coding or similar procedures, and recommend to personnel of the appropriate activity the prompt reevaluation of such limitations;

(C) review restrictions on competition arising out of restrictions on the rights of the United States in technical data, and, when appropriate, recommend that personnel of the appropriate activity initiate a review of the validity of such an asserted restriction;

(D) 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 supply or service previously procured noncompetitively due to the unavailability of such technical data;

(E) have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;

(F) receive unsolicited engineering proposals and, when appropriate (i) conduct a value analysis of such proposal to determine whether such proposal, if adopted, will result in lower costs to the United States without substantially impeding legitimate acquisition objectives and forward to personnel of the appropriate activity recommendations with respect to such proposal, or (ii) forward such proposals without analysis to personnel of the activity responsible for reviewing such proposals and who shall furnish the breakout procurement center representative with information regarding the disposition of any such proposal; and

(G) review the systems that account for the acquisition and management of technical data within the procurement center to assure that such systems provide the maximum availability and access to data needed for the preparation of offers to sell to the United States those supplies to which such data pertain which potential offerors are entitled to receive.

(3) A breakout procurement center representative is authorized to appeal the failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be filed and processed in the same manner and subject to the same conditions and limitations as an appeal filed by the Administrator pursuant to subsection (a) of this section.

(4) The Administration shall assign and co-locate at least two small business technical advisers to each major procurement center in addition to such other advisers as may be authorized from time to time. The sole duties of such advisers shall be to assist the breakout procurement center representative for the center to which such advisers are assigned in carrying out the functions described in paragraph (2) and the representatives referred to in subsection (k)(6) of this section.

(5)(A) The breakout procurement center representatives and technical advisers assigned pursuant to this subsection shall be—

(i) full-time employees of the Administration; and

(ii) fully qualified, technically trained, and familiar with the supplies and services procured by the major procurement center to which they are assigned.

(B) In addition to the requirements of subparagraph (A), each breakout procurement center representative, and at least one technical adviser assigned to such representative, shall be an accredited engineer.

(C) The Administration shall establish personnel positions for breakout procurement representatives and advisers assigned pursuant to this subsection, which are classified at a grade level of the General Schedule sufficient to attract and retain highly qualified personnel.

(6) For purposes of this subsection, the term ''major procurement center'' means a procurement center that, in the opinion of the Administrator, purchases substantial dollar amounts of other than commercial items and which has the potential to incur significant savings as the result of the placement of a breakout procurement center representative.

(7)(A) At such times as the Administrator deems appropriate, the breakout procurement center representative shall conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which such representative is assigned. Such sessions shall acquaint the participants with the provisions of this subsection and shall instruct them in methods designed to further the purposes of such subsection.

(B) The breakout procurement center representative shall prepare and personally deliver an annual briefing and report to the head of the procurement center to which such representative is assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain such recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive such briefing and report and shall, within sixty calendar days after receipt, respond, in writing, to each recommendation made by such representative.

**(m) Relationship to other procurement programs**

(1) Each agency subject to the requirements of section 2323 of title 10 shall, when implementing such requirements—

(A) establish policies and procedures that insure that there will be no reduction in the number of[2] dollar value of contracts awarded pursuant to this section and section 637(a) of this title in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurement process used to implement this section or section 637(a) of this title.

(2) All procurement center representatives (including those referred to in subsection (k)(6) of this section), in addition to such other duties as may be assigned by the Administrator, shall—

(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

(B) report to their immediate supervisors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 637(a) of this title, and section 2323 of title 10.

**(n) Determination of labor surplus areas**

For purposes of this section, the determination of labor surplus areas 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 twenty-five thousand. Such determination, as modified by the preceding sentence, shall be made by the Secretary of Labor.

**(*o*) Requirements for performance of contracts by employees of small business concerns**

(1) A concern may not be awarded a contract under subsection (a) of this section as a small business concern unless the concern agrees that—

(A) 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;

(B) in the case of a contract for procurement of supplies (other than procurement from a regular dealer in such supplies), the concern will perform work for at least 50 percent of the cost of manufacturing the supplies (not including the cost of materials).

(2) The Administrator may change the percentage under subparagraph (A) or (B) of paragraph (1) if the Administrator determines that such change is necessary to reflect conventional industry practices among business concerns that are below the numerical size standard for businesses in that industry category.

(3) The Administration shall establish, through public rulemaking, requirements similar to those specified in paragraph (1) 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 such paragraph. The percentage applicable to any such requirement shall be determined in accordance with paragraph (2).

**(p) Database, analysis, and annual report with respect to bundled contracts**

**(1) Bundled contract defined**

In this subsection, the term ''bundled contract'' has the meaning given such term in section 632(*o*)(1) of this title.

**(2) Database**

**(A)[3] In general**

Not later than 180 days after December 21, 2000, the Administrator of the Small Business Administration shall develop and shall thereafter maintain a database containing data and information regarding—

(i) each bundled contract awarded by a Federal agency; and

(ii) each small business concern that has been displaced as a prime contractor as a result of the award of such a contract.

**(3) 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 (e) of this section) 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.

**(4) Annual report on contract bundling**

**(A) In general**

Not later than 1 year after December 21, 2000, and annually in March thereafter, the Administration shall transmit a report on contract bundling to the Committees on Small Business of the House of Representatives and the Senate.

**(B) Contents**

Each report transmitted under subparagraph (A) shall include—

(i) data 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

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

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

(II) with respect to each bundled contract, data or information on—

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

[2] So in original. Probably should be ''or''.

[3] So in original. No subpar. (B) has been enacted.

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

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

(dd) the extent to which the bundling of contract requirements complied with the contracting 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

(ee) 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.

**(5) Access to data**

**(A) Federal procurement data system**

To assist in the implementation of this section, the Administration shall have access to information collected through the Federal Procurement Data System.

**(B) Agency procurement data sources**

To assist in the implementation of this section, the head of each contracting agency shall provide, upon request of the Administration, procurement information collected through existing agency data collection sources.

(Pub. L. 85–536, §2[15], July 18, 1958, 72 Stat. 395; Pub. L. 95–89, title V, §502, Aug. 4, 1977, 91 Stat. 562; Pub. L. 95–507, title II, §§221, 232, 233, Oct. 24, 1978, 92 Stat. 1770, 1772; Pub. L. 96–302, title I, §§116, 117, July 2, 1980, 94 Stat. 839; Pub. L. 98–577, title IV, §403(a), Oct. 30, 1984, 98 Stat. 3080; Pub. L. 99–272, title XVIII, §18003(a), Apr. 7, 1986, 100 Stat. 363; Pub. L. 99–500, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c)], Oct. 18, 1986, 100 Stat. 1783–82, 1783–132, 1783–147 to 1783–149, 1783–152, and Pub. L. 99–591, §101(c) [title X, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c)], Oct. 30, 1986, 100 Stat. 3341–82, 3341–132, 3341–147 to 3341–149, 3341–152; Pub. L. 99–661, div. A, title IX, formerly title IV, §§903(d), 921(a), (b)(1), (c)(2)–(e), 922(c), Nov. 14, 1986, 100 Stat. 3912, 3926–3928, 3932, renumbered title IX, Pub. L. 100–26, §3(5), Apr. 21, 1987, 101 Stat. 273; Pub. L. 100–26, §10(a)(1), (b)(1), Apr. 21, 1987, 101 Stat. 288; Pub. L. 100–180, div. A, title VIII, §809(a)–(c), Dec. 4, 1987, 101 Stat. 1130; Pub. L. 100–496, §12, Oct. 17, 1988, 102 Stat. 2465; Pub. L. 100–590, title I, §§110, 133(a), Nov. 3, 1988, 102 Stat. 2994, 3005; Pub. L. 100–656, title V, §§502, 503, title VI, §§601, 603, Nov. 15, 1988, 102 Stat. 3881, 3887, 3888; Pub. L. 101–37, §§19, 21, June 15, 1989, 103 Stat. 74, 75; Pub. L. 101–510, div. A, title VIII, §806(e)(3), Nov. 5, 1990, 104 Stat. 1593; Pub. L. 101–574, title II, §208, Nov. 15, 1990, 104 Stat. 2820; Pub. L. 102–190, div. A, title VIII, §806(d), Dec. 5, 1991, 105 Stat. 1419; Pub. L. 102–366, title II, §232(b), Sept. 4, 1992, 106 Stat. 1002; Pub. L. 102–484, div. A, title VIII, §801(h)(8), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102–569, title IX, §911(b), Oct. 29, 1992, 106 Stat. 4486; Pub. L. 103–355, title IV, §4004, title VII, §§7101(a), 7106(a), Oct. 13, 1994, 108 Stat. 3338, 3367, 3374; Pub. L. 103–403, title III, §305, Oct. 22, 1994, 108 Stat. 4189; Pub. L. 104–106, div. D, title XLIII, §4321(c)(3), Feb. 10, 1996, 110 Stat. 674; Pub. L. 105–135, title IV, §413, title VI, §603(b), Dec. 2, 1997, 111 Stat. 2618, 2632; Pub. L. 106–50, title V, §502, title VI, §601, Aug. 17, 1999, 113 Stat. 247, 248; Pub. L. 106–554, §1(a)(9) [title VIII, §§806(a), 810], Dec. 21, 2000, 114 Stat. 2763, 2763A–706.)

REFERENCES IN TEXT

Section 7102 of the Federal Acquisition Streamlining Act of 1994, referred to in subsec. (j)(3), is section 7102 of Pub. L. 103–355, which is set out below.

CODIFICATION

Pub. L. 99–591 is a corrected version of Pub. L. 99–500.

PRIOR PROVISIONS

Prior similar provisions were contained in section 214 of act July 30, 1953, ch. 282, title II, 67 Stat. 238, as amended by act Aug. 9, 1955, ch. 628, §9, 69 Stat. 551, which was previously classified to section 643 of this title. The provisions of section 215 of act July 30, 1953, formerly classified to this section, were transferred to section 2[10] of Pub. L. 85–536, and are classified to section 639 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

2000—Subsec. (a). Pub. L. 106–554, §1(a)(9) [title VIII, §806(a)], in eighth sentence, substituted ''definition of a 'United States industry' under the North American Industry Classification System, as established'' for ''four-digit standard industrial classification codes contained in the Standard Industrial Classification Manual published''.

Subsec. (p). Pub. L. 106–554, §1(a)(9) [title VIII, §810], added subsec. (p).

1999—Subsec. (g)(1). Pub. L. 106–50, §502(a)(3), inserted ''small business concerns owned and controlled by service-disabled veterans,'' after ''the maximum practicable opportunity for small business concerns,'' in penultimate sentence.

Pub. L. 106–50, §502(a)(2), inserted after second sentence ''The Government-wide 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.''

Pub. L. 106–50, §502(a)(1), inserted ''small business concerns owned and controlled by service disabled veterans,'' after ''small business concerns,'' the first place appearing in first sentence.

Subsec. (g)(2). Pub. L. 106–50, §502(b)(3), inserted ''small business concerns owned and controlled by service-disabled veterans, by'' after ''including participation by'' in fourth sentence.

Pub. L. 106–50, §502(b)(2), inserted ''small business concerns owned and controlled by service-disabled veterans,'' after ''small business concerns,'' the first place appearing in second sentence.

Pub. L. 106–50, §502(b)(1), inserted ''by small business concerns owned and controlled by service-disabled veterans,'' after ''small business concerns,'' the first place appearing in first sentence.

Subsec. (h)(1). Pub. L. 106–50, §601(a), inserted ''small business concerns owned and controlled by veterans (including service-disabled veterans),'' after ''small business concerns,'' the first place appearing.

Subsec. (h)(2). Pub. L. 106–50, §601(b)(1), inserted ''and the Congress'' before period at end of first sentence in introductory provisions.

Subsec. (h)(2)(A), (D), (E). Pub. L. 106–50, § 601(b)(2), inserted ''small business concerns owned and controlled by service-disabled veterans,'' after ''small business concerns,'' the first place appearing.

1997—Subsec. (a). Pub. L. 105–135, § 413(b), in third sentence, inserted ''or the solicitation involves an unnecessary or unjustified bundling of contract requirements, as determined by the Administration,'' after ''discrete construction projects,'', substituted ''(4)'' for ''or (4)'', and inserted before period at end '', or (5) why the agency has determined that the bundled contract (as defined in section 632(*o*) of this title) is necessary and justified''.

Subsec. (e). Pub. L. 105–135, § 413(a), added subsec. (e).

Subsec. (g)(1). Pub. L. 105–135, § 603(b)(1), inserted ''qualified HUBZone small business concerns,'' after ''small business concerns,'' in two places, substituted ''not less than 23 percent of the total value'' for ''not less than 20 percent of the total value'', and inserted after second sentence ''The Governmentwide goal for participation by qualified HUBZone small business concerns shall be established at not less than 1 percent of the total value of all prime contract awards for fiscal year 1999, not less than 1.5 percent of the total value of all prime contract awards for fiscal year 2000, not less than 2 percent of the total value of all prime contract awards for fiscal year 2001, not less than 2.5 percent of the total value of all prime contract awards for fiscal year 2002, and not less than 3 percent of the total value of all prime contract awards for fiscal year 2003 and each fiscal year thereafter.''

Subsec. (g)(2). Pub. L. 105–135, § 603(b)(2)(B), (C), inserted ''qualified HUBZone small business concerns,'' after ''small business concerns,'' in second sentence and substituted ''by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women'' for ''by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by socially and economically disadvantaged individuals and participation by small business concerns owned and controlled by women'' before period at end of fourth sentence.

Pub. L. 105–135, § 603(b)(2)(A), which directed substitution of '', by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals'' for '',, by small business concerns owned and controlled by socially and economically disadvantaged individuals'' in first sentence, was executed by making the insertion for the quoted language which started with a single comma to reflect the probable intent of Congress and the amendment by Pub. L. 104–106, § 4321(c)(3). See 1996 Amendment note below.

Subsec. (h). Pub. L. 105–135, § 603(b)(3), inserted ''qualified HUBZone small business concerns,'' after ''small business concerns,'' wherever appearing.

Subsec. (k)(5) to (10). Pub. L. 105–135, § 413(c)(1), (2), added par. (5) and redesignated former pars. (5) to (9) as (6) to (10), respectively.

1996—Subsec. (g)(2). Pub. L. 104–106 struck out second comma after ''goals for the participation by small business concerns,''.

1994—Subsec. (c)(2)(A). Pub. L. 103–403, § 305(1), amended subpar. (A) generally. Prior to amendment, subpar. (A) read as follows: ''During each of fiscal years 1989 through 1993, public or private organizations for the handicapped shall be eligible to participate in programs authorized under this section in an aggregate amount for each year as follows: In 1989 not more than $30,000,000, in 1990 not more than $40,000,000, and in each of 1991, 1992 and 1993 not more than $50,000,000.''

Subsec. (c)(7). Pub. L. 103–403, § 305(2), added par. (7).

Subsec. (e). Pub. L. 103–355, § 7101(a), struck out subsec. (e) which read as follows: ''In carrying out small business set-aside programs, departments, agencies, and instrumentalities of the executive branch shall award contracts, and encourage the placement of subcontracts for procurement to the following in the manner and in the order stated:

''(1) concerns which are small business concerns and which are located in labor surplus areas, on the basis of a total set-aside;

''(2) concerns which are small business concerns, on the basis of a total set-aside;

''(3) concerns which are small business concerns and which are located in a labor surplus area, on the basis of a partial set-aside;

''(4) concerns which are small business concerns, on the basis of a partial set-aside.''

Subsec. (f). Pub. L. 103–355, § 7101(a), struck out subsec. (f) which read as follows: ''After priority is given to the small business concerns specified in subsection (e) of this section, priority shall also be given to the awarding of contracts and the placement of subcontracts, on the basis of a total set-aside, to concerns which—

''(1) are not eligible under subsection (e) of this section;

''(2) are not small business concerns; and

''(3) will perform a substantial proportion of the production on those contracts and subcontracts within areas of concentrated unemployment or underemployment or within labor surplus areas.''

Subsec. (g)(1). Pub. L. 103–355, § 7106(a)(1), substituted '', small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women'' for ''and small business concerns owned and controlled by socially and economically disadvantaged individuals'' in first sentence and in sentence beginning with ''Notwithstanding the''.

Pub. L. 103–355, § 7106(a)(2)(A), inserted after third sentence ''The Government-wide 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.''

Subsec. (g)(2). Pub. L. 103–355, § 7106(a)(2)(B), in first sentence substituted '', by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women'' for ''and by small business concerns owned and controlled by socially and economically disadvantaged individuals,''.

Pub. L. 103–355, § 7106(a)(1), in second sentence substituted '', small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women'' for ''and small business concerns owned and controlled by socially and economically disadvantaged individuals''.

Pub. L. 103–355, § 7106(a)(2)(C), in fourth sentence inserted at end ''and participation by small business concerns owned and controlled by women''.

Subsec. (h)(1), (2)(A), (D), (E). Pub. L. 103–355, § 7106(a)(1), substituted '', small business concerns owned and controlled by socially and economically disadvantaged individuals, and small business concerns owned and controlled by women'' for ''and small business concerns owned and controlled by socially and economically disadvantaged individuals''.

Subsec. (h)(2)(F). Pub. L. 103–355, § 7106(a)(3), substituted ''small business concerns owned and controlled by women'' for ''women-owned small business enterprises''.

Subsec. (j). Pub. L. 103–355, § 4004, amended subsec. (j) generally. Prior to amendment, subsec. (j) read as follows: ''Each contract for the procurement of goods and services which has an anticipated value not in excess of the small purchase threshold and which is subject to small purchase procedures shall be reserved exclusively for small business concerns unless the contracting officer is unable to obtain offers from two or more small business concerns that are competitive with market prices and in terms of quality and delivery of the goods or services being purchased. In utilizing small purchase procedures, contracting officers shall, wherever cir-

cumstances permit, choose a method of payment which minimizes paperwork and facilitates prompt payment to contractors.''

1992—Subsec. (c)(1)(A). Pub. L. 102–569 substituted ''From People Who Are Blind or Severely Disabled'' for ''from the Blind and Other Severely Handicapped''.

Subsec. (c)(2)(B). Pub. L. 102–366, §232(b)(1), which directed the substitution of ''Blind-made'' for ''Blind-made'', could not be executed to text because ''Blind-made'' did not appear in subpar. (B).

Subsec. (k)(3), (5). Pub. L. 102–366, §232(b)(2), substituted comma for semicolon at end of pars. (3) and (5).

Subsec. (k)(9). Pub. L. 102–484, §801(h)(8)(A), substituted ''section 2323 of title 10'' for ''section 1207 of Public Law 99–661''.

Subsec. (*l*)(6). Pub. L. 102–366, §232(b)(3), inserted period at end.

Subsec. (m)(1). Pub. L. 102–484, §801(h)(8)(B), substituted ''section 2323 of title 10'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

Subsec. (m)(2)(B). Pub. L. 102–366, §232(b)(4), substituted ''requirements'' for ''requirement''.

Subsec. (m)(2)(C). Pub. L. 102–484, §801(h)(8)(C), substituted ''section 2323 of title 10'' for ''section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note)''.

1991—Subsec. (k)(5). Pub. L. 102–190 amended par. (5) generally. Prior to amendment, par. (5) read as follows: ''assist small business concerns to obtain payments, late payment interest penalties, or information due to such concerns, in conformity with chapter 39 of title 31;''.

1990—Subsec. (a). Pub. L. 101–574 inserted after second sentence ''If a proposed procurement includes in its statement of work goods or services currently being performed by a small business, and if the proposed procurement is in a quantity or estimated dollar value the magnitude of which renders small business prime contract participation unlikely, or if a proposed procurement for construction seeks to package or consolidate discrete construction projects, the Procurement Activity shall provide a copy of the proposed procurement to the Procurement Activity's Small Business Procurement Center Representative at least 30 days prior to the solicitation's issuance along with a statement explaining (1) 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, (2) why delivery schedules cannot be established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government, (3) why the proposed acquisition cannot be offered so as to make small business participation likely, or (4) why construction cannot be procured as separate discrete projects. The thirty-day notification process shall occur concurrently with other processing steps required prior to issuance of the solicitation. Within 15 days after receipt of the proposed procurement and accompanying statement, if the Procurement Center Representative believes that the procurement as proposed will render small business prime contract participation unlikely, the Representative shall recommend to the Procurement Activity alternative procurement methods which would increase small business prime contracting opportunities.''

Subsec. (j). Pub. L. 101–510 substituted ''not in excess of the small purchase threshold'' for ''of less than $25,000''.

1989—Subsec. (h)(2)(A). Pub. L. 101–37, §19, inserted ''individuals'' after ''economically disadvantaged''.

Subsec. (m)(1)(A). Pub. L. 101–37, §21, substituted ''procedures'' for ''procedure''.

1988—Subsec. (c). Pub. L. 100–590, §133(a), amended subsec. (c) generally, substituting provisions relating to programs for blind and handicapped individuals for provisions relating to eligibility, participating organizations, monitoring and evaluation, and report to Congressional committees.

Subsec. (g). Pub. L. 100–656, §502, added par. (1) and designated existing provisions as par. (2) and former pars. (1) and (2) as subpars. (A) and (B).

Subsec. (h). Pub. L. 100–656, §503, designated existing provisions as par. (1), struck out at end ''The Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.'', and added pars. (2) and (3).

Subsec. (k)(3). Pub. L. 100–656, §603(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''be responsible only to, and report directly to, the head of such agency or to his deputy, except that in the case of the Department of Defense the Director of the Office of Small and Disadvantaged Business Utilization shall be responsible to, and report directly to, the Under Secretary of Defense for Acquisition,''.

Subsec. (k)(5) to (8). Pub. L. 100–496 added par. (5) and redesignated former pars. (5) to (7) as (6) to (8), respectively.

Subsec. (k)(9). Pub. L. 100–656, §603(2)–(4), added par. (9).

Subsec. (*l*)(2)(D). Pub. L. 100–590, §110(1), struck out ''unrestricted'' before ''technical data'' in two places.

Subsec. (*l*)(2)(E). Pub. L. 100–590, §110(2), amended subpar. (E) generally. Prior to amendment, subpar. (E) read as follows: ''have access to the unclassified procurement records and other data of the procurement center;''.

Subsec. (*l*)(3). Pub. L. 100–590, §110(3), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''A breakout procurement center representative is authorized to appeal a failure to act favorably on any recommendation made pursuant to paragraph (2). Such appeal shall be in writing, specifically reciting both the circumstances of the appeal and the basis of the recommendation. The appeal shall be decided by a person within the employ of the appropriate activity who is at least one supervisory level above the person who initially failed to act favorably on the recommendation. Such appeal shall be decided within 30 calendar days of its receipt.''

Subsec. (*l*)(6). Pub. L. 100–590, §110(4), amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''For purposes of this subsection, the term 'major procurement center' means a procurement center of the Department of Defense that awarded contracts for items other than commercial items totaling at least $150,000,000 in the preceding fiscal year, and such other procurement centers as designated by the Administrator.''

Subsec. (*l*)(7). Pub. L. 100–590, §110(5), added par. (7).

Subsec. (m). Pub. L. 100–656, §601, amended subsec. (m) generally, substituting provisions related to implementation of section 1207 of Pub. L. 99–661 for former provisions related to labor surplus area procurement and manpower programs.

1987—Subsec. (a). Pub. L. 100–26, §10(a)(1), made technical amendment to directory language of section 921(a)(1) of Pub. L. 99–500, Pub. L. 99–591, and Pub. L. 99–661. See 1986 Amendment note below.

Subsec. (g). Pub. L. 100–180, §809(a)(2), struck out ''having a value of $25,000 or more'' after ''procurement contracts of such agency''.

Pub. L. 100–180, §809(a)(1), provided for temporarily inserting ''having a value of $25,000 or more'' after ''procurement contracts of such agency''. See Effective Date of 1987 Amendments note below.

Subsec. (*o*)(1). Pub. L. 100–180, §809(b)(1), substituted ''subsection (a)'' for ''this subsection'' in introductory provisions.

Subsec. (*o*)(1)(A). Pub. L. 100–26, §10(b)(1)(A), substituted ''at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern'' for ''the concern will perform at least 50 percent of the cost of the contract with its own employees''.

Subsec. (*o*)(3). Pub. L. 100–26, §10(b)(1)(B), substituted ''requirements of such paragraph'' for ''requirements of

such subparagraph'' and inserted at end ''The percentage applicable to any such requirement shall be determined in accordance with paragraph (2).''

Subsec. (p). Pub. L. 100–180, § 809(c), struck out subsec. (p) which read as follows:

''(1) Except as provided in paragraphs (2) and (3), the head of any Federal agency shall, within five days of the agency's decision to set aside a procurement for small business concerns under this section, provide the names and addresses of the small business concerns expected to respond to the procurement to any person who requests such information.

''(2) The Secretary of Defense may decline to provide information under paragraph (1) in order to protect national security interests.

''(3) The head of a Federal agency is not required to release any information under paragraph (1) that is not required to be released under section 552 of title 5.''

1986—Subsec. (a). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 921(a), (b)], Pub. L. 99–661, § 921(a), (b), as amended by Pub. L. 100–26, § 10(a)(1), amended subsec. (a) identically, inserting ''in each industry category'' in cl. (3), and inserting provision identifying an industry category, providing for determination of such category by the Administrator, and permitting segmentation of a market for goods and services under certain circumstances and provision that a contract not be awarded if the award would result in a cost to the awarding agency which exceeds a fair market price.

Subsec. (g). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 921(d)], Pub. L. 99–661, § 921(d), amended subsec. (g) identically, striking out ''having values of $10,000 or more'' after ''such agency'' and inserting provision requiring the head of each Federal agency to make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency.

Subsec. (j). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 922(c)], Pub. L. 99–661, § 922(c), amended subsec. (j) identically, substituting ''$25,000'' for ''$10,000''.

Subsec. (k)(3). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 903(d)], Pub. L. 99–661, § 903(d), which directed identical amendments to par. (3) by inserting '', except that in the case of the Department of Defense the Director of the Office of Small and Disadvantaged Business Utilization shall be responsible to, and report directly to, the Under Secretary of Defense for Acquisition'' was executed by inserting that phrase immediately before the comma at the end as the probable intent of Congress.

Subsec. (n). Pub. L. 99–272 added subsec. (n).

Subsecs. (*o*), (p). Pub. L. 99–500 and Pub. L. 99–591, § 101(c) [§ 921(c)(2), (e)], Pub. L. 99–661, § 921(c)(2), (e), amended section identically, adding subsecs. (*o*) and (p).

1984—Subsecs. (*l*), (m). Pub. L. 98–577 added subsec. (*l*) and redesignated former subsec. (*l*) as (m).

1980—Subsec. (c). Pub. L. 96–302, § 116, substituted provisions covering participation of not-for-profit organizations in certain authorized programs during fiscal years 1981, through 1983, the monitoring and evaluation of such participation as causing severe economic injury to for-profit small businesses and transmission of report to congressional committees not later than Jan. 1, 1982, respecting impact of contracts on the for-profit small businesses for provisions respecting eligibility during fiscal year 1978, of public and private organizations and individuals to participate in the award of contracts and requiring transmission of a report by March 1, 1979.

Subsec. (d). Pub. L. 96–302, § 117(a), substituted ''small business concerns'' for ''concerns''.

Subsec. (e). Pub. L. 96–302, § 117(b), in revising text, struck out from introductory clause reference to labor surplus areas; reenacted par. (1) reversing order of reference to small business concerns and location in labor surplus areas; reenacted par. (2); added par. (3); redesignated former par. (3) as (4); and struck out former par. (4) as to concerns located in labor surplus areas on basis of total set-aside, as covered in par. (1).

Subsec. (f). Pub. L. 96–302, § 117(b), substituted provision respecting other priorities in placement of contracts for requirement that subsecs. (d) and (e) of this section cease to be effective subsequent to Sept. 30, 1980, unless renewed prior to such date.

1978—Subsec. (f). Pub. L. 95–507, § 232, substituted ''September 30, 1980'' for ''September 30, 1979''.

Subsecs. (g) to (k). Pub. L. 95–507, § 221, added subsecs. (g) to (k).

Subsec. (*l*). Pub. L. 95–507, § 233, added subsec. (*l*).

1977—Pub. L. 95–89 designated existing provisions as subsec. (a) and added subsecs. (b) to (f).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by Pub. L. 104–106, see section 4401 of Pub. L. 104–106, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by sections 4004 and 7106(a) of Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–37 applicable as if included in Pub. L. 100–656, see section 32 of Pub. L. 101–37, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by sections 502 and 503 of Pub. L. 100–656 effective Oct. 1, 1989, and amendment by sections 601 and 603 of Pub. L. 100–656 effective Nov. 15, 1988, see section 803(a)(7), (b)(4)(C), of Pub. L. 100–656, as amended, set out as a note under section 631 of this title.

Amendment by Pub. L. 100–496 applicable to payments under contracts awarded, contracts renewed, and contract options exercised during or after the first fiscal quarter which begins more than 90 days after Oct. 17, 1988, see section 14(a) of Pub. L. 100–496, set out as a note under section 3902 of Title 31, Money and Finance.

EFFECTIVE DATE OF 1987 AMENDMENTS

Section 809(a)(1) of Pub. L. 100–180 provided that the amendment made by that section is in effect until Sept. 30, 1988.

Section 809(a)(2) of Pub. L. 100–180, as amended by Pub. L. 100–656, title VII, § 731, Nov. 15, 1988, 102 Stat. 3897, provided that the amendment made by that section is effective Oct. 1, 1989.

Amendment by section 10(a)(1), (b)(1) of Pub. L. 100–26 applicable as if included in each instance of the Defense Acquisition Improvement Act (as specified in section 2 of Pub. L. 100–26) [title X of section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and title IX of div. A of Pub. L. 99–661] when each was enacted [Oct. 18, 1986, Oct. 30, 1986, and Nov. 14, 1986, respectively], see section 12(c) of Pub. L. 100–26, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1986 AMENDMENTS

Section 18003(b) of Pub. L. 99–272 provided that: ''The amendment made by subsection (a) [amending this section] shall take effect on the ninetieth day after the date of the enactment of this Act [Apr. 7, 1986].

Amendment by section 101(c) [title X, §921(a), (b)(1), (c)(2)–(e)] of Pub. L. 99–500 and Pub. L. 99–591, and section 921(a), (b)(1), (c)(2)–(e) of Pub. L. 99–661 effective Oct. 1, 1987, see section 101(c) of Pub. L. 99–500 and Pub. L. 99–591, and section 921(g) of Pub. L. 99–661, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as a note under section 631 of this title.

MANUFACTURING CONTRACTS THROUGH MANUFACTURING APPLICATION AND EDUCATION CENTERS

Section 303 of Pub. L. 103–403 provided that:

''(a) IN GENERAL.—The Small Business Administration shall promote the award of Federal manufacturing contracts to small business concerns that participate in manufacturing application and education centers by working with the Department of Commerce and other agencies to identify components and subsystems that are both critical and currently foreign-sourced.

''(b) QUALIFICATIONS.—In order to qualify as a manufacturing application and education center under this section, an entity shall have the capacity to assist small business concerns in a shared-use production environment and to offer the following services:

''(1) Technology demonstration.

''(2) Technology education.

''(3) Technology application support.

''(4) Technology advancement support.

''(c) INAPPLICABILITY OF CERTAIN REQUIREMENTS.—The requirements of section 15(*o*)(1)(B) of the Small Business Act [15 U.S.C. 644(*o*)(1)(B)] shall not apply with respect to any manufacturing contract carried out by a small business concern in conjunction with a manufacturing application and education center under this section.

''(d) REGULATIONS.—Not later than 180 days after the date of enactment of this Act [Oct. 22, 1994], the Administrator of the Small Business Administration shall promulgate final regulations to carry out this section.

''(e) TERMINATION OF AUTHORITY.—The authority of the Small Business Administration under this section shall terminate on September 30, 1997.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Small Business Administration, such sums as may be necessary to carry out this section.''

PILOT PROGRAM FOR VERY SMALL BUSINESS CONCERNS

Section 304 of Pub. L. 103–403, as amended by Pub. L. 105–135, title V, §508, Dec. 2, 1997, 111 Stat. 2627; Pub. L. 106–554, §1(a)(9) [title V, §503(c)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, provided that:

''(a) ESTABLISHMENT.—The Administrator shall establish and carry out a pilot program in accordance with the requirements of this section to provide improved access to Federal contract opportunities for very small business concerns.

''(b) PROCUREMENT CONTRACTS.—

''(1) IN GENERAL.—In carrying out subsection (a), the Administrator shall identify procurement contracts of Federal agencies for award under the program.

''(2) CONTRACT AWARDS.—Under the program established pursuant to this section, the award of a procurement contract of a Federal agency identified by the Administration pursuant to paragraph (1) shall be made by the agency to an eligible program participant selected, and determined to be responsible, by the agency.

''(3) COMPETITION.—All contract opportunities offered for award under the program shall be awarded on the basis of competition among eligible very small business concerns.

''(c) ELIGIBILITY.—Only a very small business concern shall be eligible to compete for a contract to be awarded under the program. A contracting officer may rely in good faith on a written certification that a small business concern is a very small business concern.

''(d) DELEGATION OF AUTHORITY.—The authority of the Administrator under subsections (b)(1) and (c) shall be delegated to not less than 5 and not more than 10 districts of the Administration to promote the award of contracts that can be performed by very small business concerns.

''(e) FINANCIAL ASSISTANCE.—In order to assist very small business concerns receiving contract awards under the program, the Administrator shall establish a preauthorization program for such concerns for the purpose of receiving financial assistance under section 7(a) of the Small Business Act [15 U.S.C. 636(a)].

''(f) ATTAINMENT OF CONTRACT GOALS.—All contract awards made under the program shall be counted toward the attainment of the goals specified in section 15(g) of the Small Business Act [15 U.S.C. 644(g)].

''(g) REGULATIONS.—The Administrator shall—

''(1) issue proposed regulations to carry out this section not later than 180 days after the date of enactment of this Act [Oct. 22, 1994]; and

''(2) issue final regulations to carry out this section not later than 270 days after the date of enactment of this Act.

''(h) REPORT TO CONGRESS.—Not later than April 30, 1997, the Administrator shall transmit to the Congress a report on the results of the program, together with such recommendations as the Administrator deems appropriate.

''(i) PROGRAM TERM.—Implementation of the program shall begin not later than August 30, 1995. The program authorized by this section shall expire on September 30, 2003.

''(j) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

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

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

''(3) PROGRAM.—The term 'program' means a program established pursuant to subsection (a).

''(4) VERY SMALL BUSINESS CONCERN.—The term 'very small business concern' means a small business concern that—

''(A) has not more than 15 employees; and

''(B) has average annual receipts that total not more than $1,000,000.''

EXPEDITED RESOLUTION OF CONTRACT ADMINISTRATION MATTERS

Section 2353 of Pub. L. 103–355 provided that:

''(a) REGULATIONS REQUIRED.—(1) The Federal Acquisition Regulation shall include provisions that require a contracting officer—

''(A) 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

''(B) in the event that the contracting officer is unable to reply within the 30-day period, to transmit to the contractor within such period a written notification of a specific date by which the contracting officer expects to respond.

''(2) The provisions 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.).

''(b) RULE OF CONSTRUCTION.—Nothing in this section shall be considered as creating any rights under the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.).

''(c) DEFINITION.—In this section, the term 'small business concern' means a business concern that meets the requirements of section 3(a) of the Small Business Act (15 U.S.C. 632(a)) and the regulations promulgated pursuant to that section.''

CONTRACTING PROGRAM FOR CERTAIN SMALL BUSINESSES

Section 7102 of Pub. L. 103–355, as amended by Pub. L. 106–554, § 1(a)(9) [title V, § 503(d)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, provided that:

''(a) PROCUREMENT PROCEDURES AUTHORIZED.—(1) 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 pursuant to section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)), the head of the agency may enter into contracts using—

''(A) 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 described in subsection (d)(3)(C) of section 8 of the Small Business Act (15 U.S.C. 637); and

''(B) a price evaluation preference not in excess of 10 percent when evaluating an offer received from such a small business concern as the result of an unrestricted solicitation.

''(2) Paragraph (1) does not apply to the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration.

''(b) IMPLEMENTATION THROUGH THE FEDERAL ACQUISITION REGULATION.—

''(1) IN GENERAL.—The Federal Acquisition Regulation shall be revised to provide for uniform implementation of the authority provided in subsection (a).

''(2) MATTERS TO BE ADDRESSED.—The revisions of the Federal Acquisition Regulation made pursuant to paragraph (1) shall include—

''(A) conditions for the use of advance payments;

''(B) provisions for contract payment terms that provide for—

''(i) accelerated payment for work performed during the period for contract performance; and

''(ii) full payment for work performed;

''(C) guidance on how contracting officers may use, in solicitations for various classes of products or services, a price evaluation preference pursuant to subsection (a)(1)(B), 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

''(D)(i) 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 such 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

''(ii) 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.

''(c) TERMINATION.—This section shall cease to be effective at the end of September 30, 2003.''

[For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.]

SMALL BUSINESS PROCUREMENT ADVISORY COUNCIL

Section 7104 of Pub. L. 103–355 provided that:

''(a) ESTABLISHMENT.—There is hereby established an interagency council to be known as the 'Small Business Procurement Advisory Council' (hereinafter in this section referred to 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 of the Small Business Administration (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 15(k) of the Small Business Act (15 U.S.C. 644(k))[)] in each Federal agency having procurement powers.

''(d) CHAIRMAN.—The Council shall be chaired by the Administrator of the Small Business Administration.

''(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 pursuant to subsection (b)(2).''

PROCUREMENT PROCEDURES UNDER SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF 1988

Section 202(h) of Pub. L. 102–366 provided that: ''Restricted competitions pursuant to section 713(b) of the Small Business Competitiveness Demonstration Program Act of 1988 [Pub. L. 100–656] (15 U.S.C. 644 note, 102 Stat. 3892) shall not be imposed with respect to the designated industry group of architectural and engineering services if the rate of small business participation exceeds 35 percent, until the improvements to the collection of data regarding prime contract awards (as required by subsection (g) [amending section 717 of Pub. L. 100–656, set out below]) and the system for collecting data regarding other than prime contract awards (as required by subsection (d) [amending section 714 of Pub. L. 100–656, set out below]) have been implemented, as determined by the Administrator for Federal Procurement Policy.''

MODIFICATIONS OF TEST PLAN AND POLICY DIRECTION UNDER SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM ACT OF 1988

Section 202(i) of Pub. L. 102–366 provided that: ''The Administrator for Federal Procurement Policy shall issue appropriate modifications to the test plan and policy direction issued pursuant to section 715 of the Small Business Competitiveness Demonstration Program Act of 1988 [Pub. L. 100–656, set out below], to conform to the amendments made by this section and section 201(a) [amending sections 711 to 714, 716, and 717 of Pub. L. 100–656, set out below].''

CONTRACT BUNDLING STUDY

Pub. L. 102–366, title III, § 321, Sept. 4, 1992, 106 Stat. 1006, provided that theAdministrator of the Small Business Administration was to conduct a study regarding the impact of the practice known as ''contract bundling'' on the participation of small business concerns in the Federal procurement processand, not later than May 15, 1993, to submit a report on the results of the study to the Committees on Small Business of the Senate and the House of Representatives.

SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Pub. L. 100–656, title VII, §§ 701–722, Nov. 15, 1988, 102 Stat. 3889–3895, as amended by Pub. L. 101–37, §§ 23–29,

June 15, 1989, 103 Stat. 75, 76; Pub. L. 101–574, title II, §243, Nov. 15, 1990, 104 Stat. 2827; Pub. L. 102–54, §13(e), June 13, 1991, 105 Stat. 275; Pub. L. 102–366, title II, §§201–202(g), 203, Sept. 4, 1992, 106 Stat. 993–996; Pub. L. 102–484, div. A, title VIII, §801(h)(9), Oct. 23, 1992, 106 Stat. 2446; Pub. L. 102–564, title III, §307(a), Oct. 28, 1992, 106 Stat. 4263; Pub. L. 103–160, div. A, title VIII, §850(2), Nov. 30, 1993, 107 Stat. 1726; Pub. L. 103–446, title XII, §1202(a)(1), Nov. 2, 1994, 108 Stat. 4689; Pub. L. 104–208, div. D, title I, §108(a)–(c)(1), Sept. 30, 1996, 110 Stat. 3009–732, 3009–733; Pub. L. 105–18, title II, §2002, June 12, 1997, 111 Stat. 174; Pub. L. 105–135, title IV, §§401–405, Dec. 2, 1997, 111 Stat. 2616; Pub. L. 108–375, div. A, title VIII, §821, Oct. 28, 2004, 118 Stat. 2016, provided that:

''PART A—SHORT TITLE AND FINDINGS

''SEC. 701. SHORT TITLE.

''This title [amending section 632 of this title and section 541 of former Title 40, Public Buildings, Property, and Works [now 40 U.S.C. 1102], enacting provisions set out as notes under sections 632 and 644 of this title, and amending provisions set out as a note under section 644 of this title] may be cited as the 'Small Business Competitiveness Demonstration Program Act of 1988'.

''SEC. 702. FINDINGS.

''The Congress finds that—

''(1) many small business concerns have repeatedly demonstrated their ability to fulfill a broad range of Government requirements for products, services (including research, development, technical, and professional services), and construction, through the Federal procurement process;

''(2) various Congressional mandated reforms to the Federal procurement process, including the Competition in Contracting Act of 1984 [Pub. L. 98–369, div. B, title VII, see Tables for classification], the Defense Procurement Reform Act of 1984 [Pub. L. 98–525, title XII, see Tables for classification], and the Small Business and Federal Procurement Competition Enhancement Act of 1984 [Pub. L. 98–577, see Tables for classification], were designed to eliminate obstacles to competition and thereby to broaden small business participation; and

''(3) traditional agency efforts to implement the mandate for small business participation in a fair proportion of Federal procurements as required by section 15(a) of the Small Business Act [15 U.S.C. 644(a)] have resulted in—

''(A) a concentration of procurement contract awards in a limited number of industry categories, often dominated by small business concerns, through the use of set-asides, for the purpose of assuring the attainment of the agency's overall small business contracting goals; and

''(B) inadequate efforts to expand small business participation in agency procurements of products or services which have historically demonstrated low rates of small business participation despite substantial potential for expanded small business participation.

''PART B—DEMONSTRATION PROGRAM

''SEC. 711. SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM.

''(a) ESTABLISHMENT.—There is established a Small Business Competitiveness Demonstration Program (hereafter referred to in this title as 'the Program') pursuant to 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. The Administrator of Federal Procurement Policy shall designate the Administrator of the Small Business Administration as the executive agent responsible for conducting the test.

''(b) PURPOSES.—The purposes of the Program are to demonstrate whether—

''(1) the competitive capabilities of small business firms in certain industry categories will enable them to successfully compete on an unrestricted basis for Federal contracting opportunities,

''(2) the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration, can expand small business participation in Federal contracting opportunities which have been historically low, despite adequate numbers of qualified small business contractors in the economy, and

''(3) expanded use of full and open competition, as specified by the Competition in Contracting Act of 1984 (10 U.S.C. 2302(3) and 41 U.S.C. 403(7)), adversely affects small business participation in certain industry categories, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

''(c) PROGRAM TERM.—The Program shall commence on January 1, 1989.

''(d) APPLICATION.—The Program shall apply to contract solicitations for the procurement of services in industry groups designated in section 717.

''SEC. 712. ENHANCED SMALL BUSINESS PARTICIPATION GOALS.

''(a) ENHANCED GOALS FOR DESIGNATED INDUSTRY GROUPS.—Each 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. In attaining its small business participation goal for contract awards for each of the designated industry groups, each participating agency shall make a good faith effort to assure 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.—During the term of the Program, all contract opportunities in the industry groups designated in section 717 shall be reserved for exclusive competition among emerging small business concerns in accordance with the competition standard specified in section 15(j) of the Small Business Act (15 U.S.C. 644(j)), 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 established pursuant to 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 category is determined not to have been attained, upon the review of award data conducted in accordance with subsection (d)(1) of this section, the Administrator for Federal Procurement Policy, to ensure attainment of such goal, shall prescribe, on a semiannual basis, appropriate adjustments to the dollar threshold for contract opportunities in such designated industry category 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 15(j) of the Small Business Act (15 U.S.C. 644(j)).

''(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 INDUSTRY CATEGORIES WITH LIMITED SMALL BUSINESS PARTICIPATION.—(1) Concurrent with the term of the Small Business Competitiveness Demonstration Program, the head of each participating agency shall implement a program to expand small

business participation in the agency's acquisition of selected products and services in 10 industry categories which have historically demonstrated low rates of small business participation. The products and services to be targeted for the small business participation expansion program and the special goals for such program, shall be developed in conjunction with the Administrator of the Small Business Administration, and shall be subject to the requirements of section 15(g) of the Small Business Act (15 U.S.C. 644(g)).

''(2) The products or services selected for the small business participation expansion program shall be drawn from industry categories 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.

''(3) In developing its small business participation expansion program, each participating agency shall:

''(A) prepare, and furnish to the Administration, a detailed, time-phased strategy (with incremental numerical goals); and

''(B) encourage and promote joint ventures, teaming agreements and other similar arrangements, which permit small business concerns to effectively compete 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 AGENCY PERFORMANCE.—

''(1) Participating agencies shall monitor the attainment of their 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) All awards to small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) shall be counted toward attainment of the goals specified in subsection (a) of this section.

''(3) Modifications to a participating agency's solicitation practices, pursuant to section 713(b), shall be made at the beginning of the fiscal year quarter following each review, if the rate of small business participation is less than 40 percent of the contract awards.

''SEC. 713. PROCUREMENT PROCEDURES.

''(a) FULL AND OPEN COMPETITION.—Except as provided in subsections (b) and (c), each contract opportunity with an anticipated value of more than $25,000 for the procurement of services from firms in the designated industry groups (unless set aside pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 2323 of title 10, United States Code) shall be solicited on an unrestricted basis during the term of the Program, if the participating agency has attained its small business participation goal pursuant to section 712(a). Any regulatory requirements which are inconsistent with this provision shall be waived.

''(b) RESTRICTED COMPETITION.—If a participating agency has failed to attain its small business participation goal under section 712(a), subsequent contracting opportunities, which are in excess of the reserve thresholds specified pursuant to section 712(b) shall be solicited through a competition restricted to eligible small business concerns pursuant to section 15(a) of the Small Business Act (15 U.S.C. 644(a)) only at those buying activities of the participating agency that failed to attain the small business participation goal required by section 712(a). Upon determining that its contract awards to small business concerns again meet the goals required by section 712(a), a participating agency shall promptly resume the use of unrestricted solicitations pursuant to subsection (a). Such modifications in the participating agency's solicitation practices shall be made as soon as practicable, but not later than the beginning of the quarter following completion of the review made pursuant to section 712(d) indicating that changes to solicitation practices are required.

''(c) RELATIONSHIP WITH THE COMPETITION IN CONTRACTING ACT OF 1984.—Subsections (a) and (b) shall not be construed to supersede the application of the Competition in Contracting Act of 1984 (98 Stat. 1175) [Pub. L. 98–369, div. B, title VII, see Tables for classification].

''(d) RELATIONSHIP TO OTHER APPLICABLE LAW.—Solicitations for the award of contracts for architectural and engineering services (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, United States Code.

''SEC. 714. REPORTING.

''(a) AWARDS OF $25,000 OR LESS.—During the term of the Small Business Competitiveness Demonstration Program, each award of $25,000 or less made by a participating agency for the procurement of a service in any of the designated industry categories shall be reported to the Federal Procurement Data Center in the same manner as if the purchase were in excess of $25,000.

''(b) SUBCONTRACTING ACTIVITY.—

''(1) SIMPLIFIED DATA COLLECTION SYSTEM.—The Administrator for Federal Procurement Policy shall develop and implement a simplified system to collect data on the participation of small business concerns (including small business concerns owned and controlled by socially and economically disadvantaged individuals) as other than prime contractors.

''(2) PARTICIPATING INDUSTRIES.—The system established under paragraph (1) shall be used to collect data regarding contracts for architectural and engineering services (including surveying and mapping). The Administrator for Federal Procurement Policy may expand such system to collect data regarding such other designated industry groups as deemed appropriate.

''(3) PARTICIPATING AGENCIES.—As part of the system established under paragraph (1) data shall be collected from—

''(A) the Environmental Protection Agency;

''(B) the National Aeronautics and Space Administration;

''(C) the United States Army Corps of Engineers (Civil Works); and

''(D) the Department of Energy.

The Administrator for Federal Procurement Policy may require the participation of additional departments or agencies from the list of participating agencies designated in section 718.

''(4) DETERMINING SMALL BUSINESS PARTICIPATION RATES.—The value of other than prime contract awards to small business concerns furnishing architectural and engineering services (including surveying and mapping) or other services in support of such contracts (or other services provided by small business concerns in other designated industry groups as may be designated for participation by the Administrator for Federal Procurement) shall be counted towards determining whether the small business participation goal required by section 712(a) has been attained.

''(5) DURATION.—The system described in subsection (a) shall be established not later than October 1, 1996 (or as soon as practicable thereafter on the first day of a subsequent quarter of fiscal year 1997), and shall terminate on September 30, 1997.

''(c) SIZE AND STATUS OF SMALL BUSINESS CONCERNS.—During the term of the Program, each 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) receiving any award for the procurement of—

''(1) services in each of the designated industry groups; and

''(2) products or services from industry categories selected for participation in the small business participation expansion program, pursuant to section 712(c).

''SEC. 715. 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 title through a test plan issued pursuant to 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 of the Small Business Administration, shall issue a policy directive (which shall be binding on all participating agencies) to ensure consistent Government-wide implementation of this title in the Federal Acquisition Regulation, title 48 of the Code of Federal Regulations, issued pursuant to the Office of Federal Procurement Policy Act [41 U.S.C. 401 et seq.].

''SEC. 716. REPORTS TO CONGRESS.

''(a) IN GENERAL.—Within 180 days after data for each of fiscal years 1991 through 2000 are available from the Federal Procurement Data Center, the Administrator of the Small Business Administration shall report the results of the Small Business Competitiveness Demonstration Program to the Committees on Small Business of the Senate and House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate], to the Committee on Governmental Affairs [now Committee on Homeland Security and Governmental Affairs] of the Senate, and to the Committee on Government Reform and Oversight of the House of Representatives [now Committee on Government Reform of House of Representatives]. The views of the Administrator of the Small Business Administration shall be included in the report.

''(b) ANALYSIS OF PROGRAM.—The report shall include a section prepared by the Administrator of the Small Business Administration specifying the cumulative results of the intensive goaling and management program conducted to expand small business participation in agency acquisitions of selected products and services.

''(c) RECOMMENDATIONS.—To the extent the results of the Program demonstrate sufficiently high small business participation based on unrestricted contract competition in the designated industry groups, the report to be submitted during calendar year 1997 shall include recommendations (if appropriate) for changes in legislation or modifications of procurement regulations aimed at increasing reliance on unrestricted competition if high rates of small business participation in the Federal procurement market can be maintained.

''SEC. 717. DESIGNATED INDUSTRY GROUPS.

''(a) IN GENERAL.—For the purposes of participation in this Program, the designated industry groups are—

''(1) construction (excluding dredging);

''(2) refuse systems and related services;

''(3) architectural and engineering services (including surveying and mapping);

''(4) non-nuclear ship repair; and

''(5) landscaping and pest control services.

''(b) CONSTRUCTION.—Construction shall include contract awards assigned one of the standard industrial classification codes or North American Industrial Classification Codes that comprise—

''(1) Major Group 15 (Building Construction—General Contractors and Operative Builders),

''(2) Major Group 16 (Heavy Construction Other Than Building Construction—Contractors) (excluding dredging); [, and]

''(3) Major Group 17 (Construction—Special Trade Contractors).

''(c) REFUSE.—Refuse systems and related services shall include contract awards assigned to standard industrial classification code or North American Industrial Classification Code 4212 or 4953.

''(d) ARCHITECTURAL AND ENGINEERING.—Architectural and engineering services (including surveying and mapping) shall include contract awards assigned to standard industrial classification code or North American Industrial Classification Code 7389 (if identified as pertaining to mapping services), 8711, 8712, or 8713, and such contract was awarded under the qualification-based selection procedures required by title IX of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 541 et seq.) [now 40 U.S.C. 1101 to 1104].

''(e) LANDSCAPING AND PEST CONTROL SERVICES.—Landscaping and pest control services shall include contract awards assigned to North American Industrial Classification Code 561710 (relating to exterminating and pest control services) or 561730 (relating to landscaping services).

''(f) ALTERNATIVE DATA.—In the event that standard industrial classification codes or North American Industrial Classification Codes are not assigned to individual contract awards reported to the Federal Procurement Data Center by January 1, 1989, the Program may be conducted on the basis of the product and service codes used to report data pertaining to such contract awards, related to the maximum practicable extent to the standard industrial classification code or North American Industrial Classification Code for the service being provided by the contractor.

''SEC. 718. DEFINITIONS.

''(a) DESIGNATED INDUSTRY GROUPS.—'Designated industry groups' means the groups specified in section 717 for participation in the Small Business Competitiveness Demonstration Program.

''(b) EMERGING SMALL BUSINESS CONCERN.—'Emerging small business concern' means a small business concern whose size is no greater than 50 percent of the numerical size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

''(c) PARTICIPATING AGENCY.—'Participating agency' shall have the same meaning as the term 'executive agency' in section (4)(1) [4(1)] of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1)). The Administrator for Federal Procurement Policy is authorized to specify as part of the Program test plan the list of executive agencies designated to participate in the Program, which shall include:

''(1) the Department of Agriculture,

''(2) 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),

''(3) the Department of Energy,

''(4) the Department of Health and Human Services,

''(5) the Department of the Interior,

''(6) the Department of Transportation,

''(7) the Environmental Protection Agency,

''(8) the General Services Administration (with the Public Building Service reporting separately),

''(9) the National Aeronautics and Space Administration, and

''(10) the Department of Veterans Affairs.

The Administrator for Federal Procurement Policy is authorized to require any participating agencies to report separately in any manner deemed appropriate to enhance the attainment of the test activities authorized by this title.

''(d) SMALL BUSINESS PARTICIPATION.—'Small business participation' shall include the aggregate dollar value of every procurement contract award made to a small business concern, without regard to whether such award was based on restricted or unrestricted competition, or was made on a sole source basis.

''(e) STANDARD INDUSTRIAL CLASSIFICATION CODE.—'Standard industrial classification code' means a four digit code assigned to an industry category in the Standard Industrial Classification Manual published by the Office of Management and Budget in effect on the date of enactment of this Act [Nov. 15, 1988].

''PART C—ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES

''SEC. 721. ALTERNATIVE PROGRAM FOR CLOTHING AND TEXTILES.

''(a) ESTABLISHMENT.—Subject to the requirements of subsection (b), of the total dollar amount of contracts for each standard industrial classification code for clothing and textiles awarded by the Defense Logistics Agency for each of the fiscal years 1989, 1990, and 1991:

''(1) To the maximum extent practicable, 50 percent shall not be restricted by the size status of the competing business concerns.

''(2) To the maximum extent practicable, 50 percent shall be made available for award pursuant to—

''(A) section 8(a) of the Small Business Act (15 U.S.C. 637(a));

''(B) section 2323 of title 10, United States Code; and

''(C) section 15(a) of the Small Business Act (15 U.S.C. 644(a)), if the criteria for such awards are met pursuant to part 19.5 (Set-Asides for Small Business) of title 48, Code of Federal Regulations, as in effect on September 1, 1988.

''(b) COMPUTATION.—In order to calculate the percent limitation established pursuant to subsection (a), the Department may establish, after consultation with the Small Business Administration, major groupings of standard industrial classification codes that are closely related and apply such limitations to such groupings.

''(c) PROGRAM TERM.—The Program shall commence on January 1, 1989, and terminate on September 30, 1996.

''(d) REPORT.—The Secretary of Defense shall issue reports to the Congress on the operations of the program established pursuant to this section. Such reports shall detail the effects of the program on the mobilization base and on small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. Interim reports shall be submitted every 6 months during the term of the program to the Committees on Armed Services and Small Business of the House of Representatives and the Senate.

''SEC. 722. EXPANDING SMALL BUSINESS PARTICIPATION IN DREDGING.

''(a) ESTABLISHMENT.—The Secretary of the Army (hereafter in this section referred to as the 'Secretary') shall conduct a program to expand the participation of small business concerns and emerging small business concerns in contracting opportunities for dredging solicited on or after January 1, 1989, commencing on October 1, 1989.

''(b) ENHANCED GOALS.—Of the aggregate value of all suitable contracts for dredging, the Department of the Army (hereafter in this section referred to as the 'Department') shall make every reasonable effort to award to small business concerns:

''(1) 20 percent during fiscal year 1989, including 5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

''(2) 25 percent during fiscal year 1990, including 7.5 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

''(3) 30 percent during fiscal year 1991, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns;

''(4) 30 percent during fiscal year 1992, including 10 percent of the total dollar value of contracts which is reserved for emerging small business concerns; and

''(5) not less than 20 percent during fiscal year 1993, and each subsequent year during the term of the program, including not less than 5 percent of the dollar value of suitable contracts that shall be reserved for emerging small business concerns.

The total value of contracts to be performed exclusively through the use of so-called dustpan dredges or seagoing hopper dredges is deemed to be generally unsuitable for performance by small business concerns and is to be excluded in calculating whether the rates of small business participation specified in subsection (b) have been attained.

''(c) CONTRACT AWARD PROCEDURES.—(1) Except as provided in paragraphs (3) and (4), the Department shall solicit and award contracts for dredging through full and open competition in conformity with section 2304 of title 10, United States Code, section 15 of the Small Business Act (15 U.S.C. 644), and the implementing procurement regulations promulgated in conformity with section 6 of the Office of Federal Procurement Policy Act (41 U.S.C. 405). Nothing herein shall impair the award of contracts pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)) or section 2323 of title 10, United States Code.

''(2) Prior to making a determination to restrict a solicitation for the performance of a dredging contract for exclusive competition among 2 or more eligible small business concerns in accordance with section 19.5 of the Governmentwide Federal Procurement Regulation (48 C.F.R. 19.5, or any successor thereto), the contracting officer shall make a determination that each anticipated offeror is a responsible source (as defined under section 4(7) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(7)) and has (or can demonstrate the capability to obtain) the specialized dredging equipment deemed necessary to perform the work to be required in accordance with the schedule to be specified in the solicitation.

''(3) Contracting opportunities for dredging shall be reserved for competition among emerging small business concerns if their estimated award value is below an amount to be specified by the Administrator for Federal Procurement Policy (hereafter in this section referred to as the 'Administrator'), upon the recommendation of the Secretary. Such reserve amount shall be established by the Administrator at the start of the program at a level which can reasonably be expected to result in the Department attaining the applicable participation goal for emerging small business concerns. Such reserve threshold shall be reviewed by the Secretary and adjusted by the Administrator to the extent necessary on a semiannual basis beginning after the end of the second quarter of fiscal year 1989 on the basis of the aggregate of contract awards for the four fiscal year quarters preceding the date of the review.

''(4) The Secretary shall restrict for competition among all eligible small business concerns such additional contracting opportunities for dredging in such numbers and at such estimated award values as can reasonably be expected to result in the Department exceeding the applicable participation goal for small business concerns generally.

''(d) ACQUISITION STRATEGIES TO FOSTER SMALL BUSINESS PARTICIPATION.—(1) In attaining the goals for participation by small business concerns and emerging small business concerns, the Secretary is encouraged to:

''(A) specify contract requirements and contractual terms and conditions that are conducive to competition by small business concerns and emerging small business concerns, consistent with the mission or program requirements of the Department;

''(B) foster joint ventures, teaming agreements, and other similar arrangements, which permit small business concerns to effectively compete for contract opportunities for which an individual firm would lack the requisite capacity or capability needed to establish responsibility for the award of a contract; and

''(C) foster subcontracting through plans negotiated and enforced pursuant to section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or solicitation requirements specifying minimum percentages of subcontracting for the purpose of determining the responsiveness of an offer.

''(2) During the term of the program, data shall be collected pertaining to the actual size of the firm receiving an award as a small business concern or an emerging small business concern.

''(e) SIZE STANDARD.—For the purposes of the program established by subsection (a), the size standard pertaining to standard industrial classification code 1629 (Dredging and Surface Cleanup Activities) in effect

on October 1, 1988 shall remain in effect until September 30, 1990.

''(f) REPORTS.—

''(1) The Secretary shall furnish a report to the Committees on Small Business of the Senate and House of Representatives [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate], the Administrator of the Small Business Administration, and the Administrator for Federal Procurement Policy within 120 days after September 30, 1995, regarding compliance with this section.

''(2) Interim reports shall be submitted annually within 90 days after the close of each fiscal year during the term of the program established under subsection (a). The Secretary may include recommendations regarding adjustments to the Department's participation goals for small business concerns and emerging small business concerns and to the applicable size standard, if the Secretary determines that such goals cannot reasonably be attained from the pool of firms meeting the current size standard.''

[Section 1202(a)(1) of Pub. L. 103–446 provided that the amendment made by that section to section 13(e) of Pub. L. 102–54 [amending section 718 of Pub. L. 100–656, set out above] is effective as of June 13, 1991, and as if included in the enactment of Pub. L. 102–54.]

SEGMENTATION OF INDUSTRY CATEGORY OF SHIPBUILDING AND SHIP REPAIR

Section 741 of Pub. L. 100–656 provided that: ''The Small Business Administration, pursuant to the authority of section 15(a) of the Small Business Act (15 U.S.C. 644(a)), shall segment the industry category of shipbuilding and ship repair, as follows:

''(1) nuclear shipbuilding and repair;

''(2) non-nuclear shipbuilding; and

''(3) non-nuclear ship repair, which shall be further segmented by, at least, East Coast and West Coast facilities.''

PROGRAMS FOR BLIND AND HANDICAPPED INDIVIDUALS; REPORT ON IMPACT ON SMALL BUSINESS CONCERNS

Pub. L. 100–590, title I, §133(b), Nov. 3, 1988, 102 Stat. 3006, provided that not later than Sept. 30, 1992, the General Accounting Office was to prepare a report describing the impact that contracts awarded under subsec. (c) of this section had on for-profit small business concerns for fiscal years 1989 through 1991, and transmit the report to the Committees on Small Business of the Senate and the House of Representatives.

TASK FORCE ON PURCHASES FROM BLIND AND SEVERELY HANDICAPPED INDIVIDUALS; ESTABLISHMENT; MEETINGS; RECOMMENDATIONS

Section 133(c) of Pub. L. 100–590 provided that: ''There is established within the Small Business Administration a task force on purchases from the blind and severely handicapped which shall consist of one representative of the small business community appointed by the Administrator of the Small Business Administration and one individual knowledgeable in the affiars [sic] 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 Handicapped established under the first section of the Act entitled 'An Act to create a Committee on Purchases of Blind-made Products, and for other purposes', approved June 25, 1938 (41 U.S.C. 46). The task force shall meet at least once every six months for the purpose of reviewing the award of contracts under section 15(c) of the Small Business Act [15 U.S.C. 644(c)] and recommending to the Small Business Administration such administrative or statutory changes as it deems appropriate.''

STANDARDS FOR MEASURING COST SAVINGS FROM BREAKOUT PROCUREMENT CENTER REPRESENTATIVES

Section 403(b) of Pub. L. 98–577 provided that:

''(1) The Administrator of the Small Business Administration and the Comptroller General of the United States shall jointly establish standards for measuring cost savings achieved through the efforts of breakout procurement center representatives and for measuring the extent to which competition has been increased as a result of such efforts. Thereafter, the Administrator shall annually prepare and submit to the Congress a report setting forth—

''(A) the cost savings achieved during the year covered by such report through the efforts of breakout procurement center representatives;

''(B) an evaluation of the extent to which competition has been increased as a result of such efforts; and

''(C) such other information as the Administrator may deem appropriate.

''(2) Within 180 days following the submission of the second annual report to Congress by the Administrator, the Comptroller General shall report to the Congress an evaluation of the Administration's adherence to the standards jointly established and the accuracy of the information the Administration has submitted to the Congress.''

EX. ORD. NO. 13157. INCREASING OPPORTUNITIES FOR WOMEN-OWNED SMALL BUSINESSES

Ex. Ord. No. 13157, May 23, 2000, 65 F.R. 34035, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act, 15 U.S.C. 631, *et seq.*, section 7106 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355) [amending 15 U.S.C. 632, 637, 644, 645], and the Office of Federal Procurement Policy [Act], 41 U.S.C. 403, *et seq.*, and in order to strengthen the executive branch's commitment to increased opportunities for women-owned small businesses, it is hereby ordered as follows:

SECTION 1. *Executive Branch Policy*. In order to reaffirm and strengthen the statutory policy contained in the Small Business Act, 15 U.S.C. 644(g)(1), it shall be the policy of the executive branch to take the steps necessary to meet or exceed the 5 percent Government-wide goal for participation in procurement by women-owned small businesses (WOSBs). Further, the executive branch shall implement this policy by establishing a participation goal for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year.

SEC. 2. *Responsibilities of Federal Departments and Agencies*. Each department and agency (hereafter referred to collectively as ''agency'') that has procurement authority shall develop a long-term comprehensive strategy to expand opportunities for WOSBs. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for WOSBs of not less than 5 percent of the total value of all prime contract awards for each fiscal year and of not less than 5 percent of the total value of all subcontract awards for each fiscal year. The agency's plans shall include, where appropriate, methods and programs as set forth in section 4 of this order.

SEC. 3. *Responsibilities of the Small Business Administration*. The Small Business Administration (SBA) shall establish an Assistant Administrator for Women's Procurement within the SBA's Office of Government Contracting. This officer shall be responsible for:

(a) working with each agency to develop and implement policies to achieve the participation goals for WOSBs for the executive branch and individual agencies;

(b) advising agencies on how to implement strategies that will increase the participation of WOSBs in Federal procurement;

(c) evaluating, on a semiannual basis, using the Federal Procurement Data System (FPDS), the

achievement of prime and subcontract goals and actual prime and subcontract awards to WOSBs for each agency;

(d) preparing a report, which shall be submitted by the Administrator of the SBA to the President, through the Interagency Committee on Women's Business Enterprise and the Office of Federal Procurement Policy (OFPP), on findings based on the FPDS, regarding prime contracts and subcontracts awarded to WOSBs;

(e) making recommendations and working with Federal agencies to expand participation rates for WOSBs, with a particular emphasis on agencies in which the participation rate for these businesses is less than 5 percent;

(f) providing a program of training and development seminars and conferences to instruct women on how to participate in the SBA's 8(a) [15 U.S.C. 637(a)] program, the Small Disadvantaged Business (SDB) program, the HUBZone program, and other small business contracting programs for which they may be eligible;

(g) developing and implementing a single uniform Federal Government-wide website, which provides links to other websites within the Federal system concerning acquisition, small businesses, and women-owned businesses, and which provides current procurement information for WOSBs and other small businesses;

(h) developing an interactive electronic commerce database that allows small businesses to register their businesses and capabilities as potential contractors for Federal agencies, and enables contracting officers to identify and locate potential contractors; and

(i) working with existing women-owned business organizations, State and local governments, and others in order to promote the sharing of information and the development of more uniform State and local standards for WOSBs that reduce the burden on these firms in competing for procurement opportunities.

SEC. 4. *Other Responsibilities of Federal Agencies*. To the extent permitted by law, each Federal agency shall work with the SBA to ensure maximum participation of WOSBs in the procurement process by taking the following steps:

(a) designating a senior acquisition official who will work with the SBA to identify and promote contracting opportunities for WOSBs;

(b) requiring contracting officers, to the maximum extent practicable, to include WOSBs in competitive acquisitions;

(c) prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by and among small businesses, HUBZone small businesses, SDBs, and WOSBs, and providing guidance on structuring acquisitions, including, but not limited to, those expected to result in multiple award contracts, in order to facilitate competition by and among these groups;

(d) implementing mentor-protege programs, which include women-owned small business firms; and

(e) offering industry-wide as well as industry-specific outreach, training, and technical assistance programs for WOSBs including, where appropriate, the use of Government acquisitions forecasts, in order to assist WOSBs in developing their products, skills, business planning practices, and marketing techniques.

SEC. 5. *Subcontracting Plans*. The head of each Federal agency, or designated representative, shall work closely with the SBA, OFPP, and others to develop procedures to increase compliance by prime contractors with subcontracting plans proposed under section 8(d) of the Small Business Act (15 U.S.C. 637(d)) or section 834 of Public Law 101–189, as amended (15 U.S.C. 637 note), including subcontracting plans involving WOSBs.

SEC. 6. *Action Plans*. If a Federal agency fails to meet its annual goals in expanding contract opportunities for WOSBs, it shall work with the SBA to develop an action plan to increase the likelihood that participation goals will be met or exceeded in future years.

SEC. 7. *Compliance*. Independent agencies are requested to comply with the provisions of this order.

SEC. 8. *Consultation and Advice*. In developing the long-term comprehensive strategies required by section 2 of this order, Federal agencies shall consult with, and seek information and advice from, State and local governments, WOSBs, other private-sector partners, and other experts.

SEC. 9. *Judicial Review*. This order is for internal management purposes for the Federal Government. It does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, its employees, or any other person.

WILLIAM J. CLINTON.

EX. ORD. NO. 13170. INCREASING OPPORTUNITIES AND ACCESS FOR DISADVANTAGED BUSINESSES

Ex. Ord. No. 13170, Oct. 6, 2000, 65 F.R. 60827, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Small Business Act (15 U.S.C. 631 *et seq.*), section 7102 of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, 15 U.S.C. 644 note), the Office of Federal Procurement Policy Act (41 U.S.C. 403 *et seq.*), Executive Order 11625 [15 U.S.C. 631 note], and to provide for increased access for disadvantaged businesses to Federal contracting opportunities, it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the executive branch to ensure nondiscrimination in Federal procurement opportunities for businesses in the Small Disadvantaged Business Program (SDBs), businesses in the section 8(a) Business Development program of the Small Business Administration (8(a)s), and Minority Business Enterprises (MBEs) as defined in section 6 of Executive Order 11625, of October 13, 1971, and to take affirmative action to ensure inclusion of these businesses in Federal contracting. These businesses are of vital importance to job growth and the economic strength of the United States but have faced historic exclusion and underutilization in Federal procurement. All agencies within the executive branch with procurement authority are required to take all necessary steps, as permitted by law, to increase contracting between the Federal Government and SDBs, 8(a)s, and MBEs.

SEC. 2. *Responsibilities of Executive Departments and Agencies with Procurement Authority*. The head of each executive department and agency shall carry out the terms of this order and shall designate, where appropriate, his or her Deputy Secretary or equivalent to implement the terms of this order.

(a) Each department and agency with procurement authority shall:

(i) aggressively seek to ensure that 8(a)s, SDBs, and MBEs are aware of future prime contracting opportunities through wide dissemination of contract announcements, including sources likely to reach 8(a)s, SDBs, other small businesses, and MBEs. Each department and agency shall use all available forms of communication to implement this provision, including the Internet, speciality press, and trade press;

(ii) work with the Small Business Administration (SBA) to ensure that information regarding sole source contracts awarded through the section 8(a) program receives the widest dissemination possible to 8(a)s;

(iii) ensure that the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, see Tables for classification] are used to the maximum extent permitted by law in areas of economic activity in which SDBs have historically been underused;

(iv) aggressively use the firms in the section 8(a) program, particularly in the developmental stage of

the program, so that these firms have an opportunity to overcome artificial barriers to Federal contracting and gain access to the Federal procurement arena;

(v) ensure that department and agency heads take all reasonable steps so that prime contractors meet or exceed Federal subcontracting goals, and enforce subcontracting commitments as required by the Small Business Act (15 U.S.C. 637(d)) and other related laws. In particular, they shall ensure that prime contractors actively solicit bids for subcontracting opportunities from 8(a)s and SDBs, and fulfill their SDB and section 8(d) subcontracting obligations. Enforcement of SDB subcontracting plan commitments shall include assessments of liquidated damages, where appropriate, pursuant to applicable contract clauses;

(vi) encourage the establishment of business-to-business mentoring and teaming relationships, including the implementation of Mentor-Protege programs, to foster the development of the technical and managerial capabilities of 8(a)s and SDBs and to facilitate long-term business relationships;

(vii) offer information, training, and technical assistance programs for 8(a)s and SDBs including, where appropriate, Government acquisition forecasts in order to assist 8(a)s and SDBs in developing their products, skills, business planning practices, and marketing techniques;

(viii) train program and procurement officials regarding the policy of including 8(a)s and SDBs in Federal procurement. This includes prescribing procedures to ensure that acquisition planners, to the maximum extent practicable, structure acquisitions to facilitate competition by SDBs and 8(a)s, including their participation in the competition of multiple award requirements;

(ix) provide the information required by the Department of Commerce when it requests data to develop the benchmarks used in the price evaluation preference programs authorized by the Federal Acquisition Streamlining Act of 1994;

(x) ensure that Directors of Offices of Small and Disadvantaged Business Utilization carry out their responsibilities to maximize the participation of 8(a)s and SDBs in Federal procurement and, in particular, ensure that the Directors report directly to the head of each department or agency as required by law; and

(xi) as required by law, establish with the Small Business Administration small business goals to ensure that the government-wide goal for participation of small business concerns is not less than 23 percent of Federal prime contracts. Where feasible and consistent with the effective and efficient performance of its mission, each agency shall establish a goal of achieving a participation rate for SDBs of not less than 5 percent of the total value of prime contract awards for each fiscal year and of not less than 5 percent of the total value of subcontract awards for each year. Each agency shall also establish a goal for awards made to 8(a) firms pursuant to section 8(a) of the Small Business Act [15 U.S.C. 637(a)]. These goals shall be considered the minimum goals and every effort shall be taken to exceed these goals wherever feasible.

(b) Each department and agency with procurement authority shall:

(i) develop a long-term comprehensive plan to implement the requirements of section 2(a) of this order and submit this plan to the Director of the Office of Management and Budget (OMB) within 90 days of the date of this order. The Director of OMB shall review each plan and report to the President on the sufficiency of each plan to carry out the terms of this order; and

(ii) annually, by April 30 each year, assess its efforts and the results of those efforts to increase utilization of 8(a)s, SDBs, and MBEs as both prime contractors and subcontractors and report on those efforts to the President through the Director of OMB, who shall review the evaluations made of the agency assessments by the Small Business Administration.

SEC. 3. *Responsibilities of the Small Business Administration*. The Administrator of the SBA shall:

(a) evaluate on a semi-annual basis, using the Federal Procurement Data System (FPDS), the achievement of government-wide prime and subcontract goals and the actual prime and subcontract awards to 8(a)s and SDBs for each department and agency. The OMB shall review SBA's evaluation;

(b) ensure that Procurement Center Representatives receive adequate training regarding the section 8(a) and SDB programs and that they consistently and aggressively seek opportunities for maximizing the use of 8(a)s and SDBs in department and agency procurements; and

(c) ensure that each department and agency's small and disadvantaged business procurement goals as well as the amount of procurement of each department and agency with 8(a)s, SDBs, and MBEs is publicly available in an easily accessible and understandable format such as through publication on the Internet.

SEC. 4. *Federal Advertising*. Each department or agency that contracts with businesses to develop advertising for the department or agency or to broadcast Federal advertising shall take an aggressive role in ensuring substantial minority-owned entities' participation, including 8(a), SDB, and MBE, in Federal advertising-related procurements. Each department and agency shall ensure that all creation, placement, and transmission of Federal advertising is fully reflective of the Nation's diversity. To achieve this diversity, special attention shall be given to ensure placement in publications and television and radio stations that reach specific ethnic and racial audiences. Each department and agency shall ensure that payment for Federal advertising is commensurate with fair market rates in the relevant market. Each department and agency shall structure advertising contracts as commercial acquisitions consistent with part 12 of the Federal Acquisition Regulation processes and paperwork to enhance participation by 8(a)s, SDBs, and MBEs.

SEC. 5. *Information Technology*. Each department and agency shall aggressively seek to ensure substantial 8(a), SDB, and MBE participation in procurements for and related to information technology, including procurements in the telecommunications industry. In so doing, the Chief Information Officer in each department and agency shall coordinate with procurement officials to implement this section.

SEC. 6. *General Services Administration Schedules*. The SBA and the General Services Administration (GSA) shall act promptly to expand inclusion of 8(a)s and SDBs on GSA Schedules, and provide greater opportunities for 8(a) and SDB participation in orders under such schedules. The GSA should ensure that procurement and program officials at all levels that use GSA Schedules aggressively seek to utilize the Schedule contracts of 8(a)s and SDBs. The GSA shall allow agencies ordering from designated 8(a) firms under the Multiple Award Schedule to count those orders toward their 8(a) procurement goals.

SEC. 7. *Bundling Contracts*. To the extent permitted by law, departments and agencies must submit to the SBA for review any contracts that are proposed to be bundled. The determination of the SBA with regard to the appropriateness of bundling in each instance must be carefully reviewed by the department or agency head, or his or her designee, and must be given due consideration. If there is an unresolvable conflict, then the SBA or the department or agency can seek assistance from the OMB.

SEC. 8. *Awards Program*. The Secretary of Commerce and the Administrator of the SBA shall jointly undertake a feasibility study to determine the appropriateness of an awards program for executive departments and agencies who best exemplify the letter and intent of this order in increasing opportunities for 8(a)s, SDBs, and MBEs in Federal procurement. Such study shall be presented to the President within 90 days of the date of this order.

SEC. 9. *Applicability*. Independent agencies are requested to comply with the provisions of this order.

SEC. 10. *Administration, Enforcement, and Judicial Review.*

(a) This order shall be carried out to the extent permitted by law and consistent with the Administration's priorities and appropriations.

(b) This order is not intended and should not be construed to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or its employees.

WILLIAM J. CLINTON.

DELEGATION OF AUTHORITY TO ESTABLISH ANNUAL GOALS FOR PARTICIPATION OF SMALL BUSINESS CONCERNS IN PROCUREMENT CONTRACTS

Memorandum of the President of the United States, June 6, 1990, 55 F.R. 27453–27455, provided:

Memorandum for the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States, including section 15(g) of the Small Business Act, as amended [subsec. (g) of this section], and section 301 of Title 3 of the United States Code, I hereby delegate to the Director of the Office of Management and Budget the authority vested in the President to establish the annual goals required by Section 502 of the Business Opportunity Development Reform Act of 1988 (P.L. 100–656) [amending this section].

You are authorized and directed to publish this memorandum in the Federal Register.

GEORGE BUSH.

CONTINUED COMMITMENT TO SMALL, SMALL DISADVANTAGED, AND SMALL WOMEN-OWNED BUSINESSES IN FEDERAL PROCUREMENT

Memorandum of President of the United States, Oct. 13, 1994, 59 F.R. 52397, provided:

Memorandum for the Heads of Executive Departments and Agencies [and] the President's Management Council

It is the policy of the Federal Government that a fair proportion of its contracts be placed with small, small disadvantaged, and small women-owned businesses. Such businesses should also have the maximum practicable opportunity to participate as subcontractors in contracts awarded by the Federal Government consistent with efficient contract performance. I am committed to the continuation of this policy. Therefore, I ask that you encourage the use of various tools, including set-asides, price preferences, and section 8(a) of the Small Business Act (15 U.S.C. 637(a)), as necessary to achieve this policy objective.

The Federal Acquisition Streamlining Act of 1994 [Pub. L. 103–355, see Short title of 1994 Amendment note set out under section 251 of Title 41, Public Contracts] authorizes civilian agencies to utilize set-aside procurements for small disadvantaged businesses. The Act also, for the first time, establishes goals for contracting with small women-owned businesses. These provisions, along with others in the Act, will provide greater access to Federal Government business opportunities for small, small disadvantaged, and small women-owned businesses. Department and agency heads should ensure that efforts to streamline acquisition procedures encourage the participation of these businesses in Federal procurements.

This memorandum shall be published in the Federal Register.

WILLIAM J. CLINTON.

## § 645. Offenses and penalties

### (a) False statements; overvaluation of securities

Whoever makes any statement knowing it to be false, or whoever willfully overvalues any security, for the purpose of obtaining for himself or for any applicant any loan, or extension thereof by renewal, deferment of action, or otherwise, or the acceptance, release, or substitution of security therefor, or for the purpose of influencing in any way the action of the Administration, or for the purpose of obtaining money, property, or anything of value, under this chapter, shall be punished by a fine of not more than $5,000 or by imprisonment for not more than two years, or both.

### (b) Embezzlement, etc.

Whoever, being connected in any capacity with the Administration, (1) embezzles, abstracts, purloins, or willfully misapplies any moneys, funds, securities, or other things of value, whether belonging to it or pledged or otherwise entrusted to it, or (2) with intent to defraud the Administration or any other body politic or corporate, or any individual, or to deceive any officer, auditor, or examiner of the Administration, makes any false entry in any book, report, or statement of or to the Administration, or, without being duly authorized, draws any order or issues, puts forth, or assigns any note, debenture, bond, or other obligation, or draft, bill of exchange, mortgage, judgment, or decree thereof, or (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 any other act of the Administration, or (4) gives any unauthorized information concerning any future action or plan of the Administration which might affect the value of securities, or, having such knowledge, invests or speculates, directly or indirectly, in the securities or property of any company or corporation receiving loans or other assistance from the Administration, shall be punished by a fine of not more than $10,000 or by imprisonment for not more than five years, or both.

### (c) Concealment, etc.

Whoever, with intent to defraud, knowingly conceals, removes, disposes of, or converts to his own use or to that of another, any property mortgaged or pledged to, or held by, the Administration, shall be fined not more than $5,000 or imprisoned not more than five years, or both; but if the value of such property does not exceed $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both.

### (d) Misrepresentation, etc.

(1) Whoever misrepresents the status of any concern or person as a ''small business concern'', a ''qualified HUBZone small business concern'', a ''small business concern owned and controlled by socially and economically disadvantaged individuals'', or a ''small business concern owned and controlled by women'', in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 638, 644, or 657a of this title;

(B) subcontract to be awarded pursuant to section 637(a) of this title;

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 637(d) of this title; or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provi-

sion of Federal law that specifically references section 637(d) of this title for a definition of program eligibility,[1] shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall—

(A) be punished by a fine of not more than $500,000 or by imprisonment for not more than 10 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812);

(C) 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 such 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

(D) be ineligible for participation in any program or activity conducted under the authority of this chapter or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

**(e) Representations under subsection (d) of this section to be in writing**

Any representation of the status of any concern or person as a ''small business concern'', a ''HUBZone small business concern'', a ''small business concern owned and controlled by socially and economically disadvantaged individuals'', or a ''small business concern owned and controlled by women'' in order to obtain any prime contract or subcontract enumerated in subsection (d) of this section shall be in writing.

**(f) Misrepresentation of compliance with section 636(j)(10)(I)**

Whoever falsely certifies past compliance with the requirements of section 636(j)(10)(I) of this title shall be subject to the penalties prescribed in subsection (d) of this section.

(Pub. L. 85–536, § 2[16], July 18, 1958, 72 Stat. 395; Pub. L. 88–264, § 2, Feb. 5, 1964, 78 Stat. 8; Pub. L. 99–272, title XVIII, § 18009, Apr. 7, 1986, 100 Stat. 368; Pub. L. 100–656, title IV, § 405, Nov. 15, 1988, 102 Stat. 3875; Pub. L. 103–355, title VII, § 7106(c), Oct. 13, 1994, 108 Stat. 3376; Pub. L. 105–85, div. A, title X, § 1073(g)(4), Nov. 18, 1997, 111 Stat. 1906; Pub. L. 105–135, title VI, § 603(c), Dec. 2, 1997, 111 Stat. 2632.)

REFERENCES IN TEXT

The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801–3812), referred to in subsec. (d)(2)(B), is subtitle B of title VI of Pub. L. 99–509, Oct. 21, 1986, 100 Stat. 1934, as amended, which is classified generally to chapter 38 (§ 3801 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 3801 of Title 31 and Tables.

The Small Business Investment Act of 1958, referred to in subsec. (d)(2)(D), is Pub. L. 85–699, Aug. 21, 1958, 72 Stat. 689, as amended, which is classified principally to chapter 14B (§ 661 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 661 of this title and Tables.

PRIOR PROVISIONS

Prior similar provisions were contained in section 209 of act July 30, 1953, ch. 282, title II, 67 Stat. 237, which was previously classified to section 638 of this title. The provisions of section 216 of act July 30, 1953, formerly classified to this section, were transferred to section 2[8] of Pub. L. 85–536, which was classified to section 637(c) of this title prior to repeal by Pub. L. 102–191. See section 656 of this title.

AMENDMENTS

1997—Subsec. (d)(1). Pub. L. 105–135, § 603(c)(1)(A), inserted '', a 'qualified HUBZone small business concern','' after '' 'small business concern',''.

Pub. L. 105–85 substituted ''concern owned and controlled by women'' for ''concerns owned and controlled by women''.

Subsec. (d)(1)(A). Pub. L. 105–135, § 603(c)(1)(B), substituted ''section 638, 644, or 657a'' for ''section 638 or 644''.

Subsec. (e). Pub. L. 105–135, § 603(c)(2), inserted '', a 'HUBZone small business concern','' after '' 'small business concern',''.

Pub. L. 105–85 substituted ''concern owned and controlled by women'' for ''concerns owned and controlled by women''.

1994—Subsec. (d)(1). Pub. L. 103–355, § 7106(c)(1), substituted '', a 'small business concern owned and controlled by socially and economically disadvantaged individuals', or a 'small business concerns owned and controlled by women' '' for ''or 'small business concern owned and controlled by socially and economically disadvantaged individuals' ''.

Subsec. (e). Pub. L. 103–355, § 7106(c)(2), substituted '', a 'small business concern owned and controlled by socially and economically disadvantaged individuals', or a 'small business concerns owned and controlled by women' '' for ''or 'small business concern owned and controlled by socially and economically disadvantaged individuals' ''.

1988—Subsec. (d). Pub. L. 100–656, § 405(a), amended subsec. (d) generally, designating existing provisions as par. (1), redesignating former pars. (1) to (4) as subpars. (A) to (D), respectively, and in subpar. (D), substituting ''subject to the penalties and remedies described in paragraph (2)'' for ''punished by a fine of not more than $50,000 or by imprisonment for not more than five years, or both'', and adding par. (2).

Subsec. (f). Pub. L. 100–656, § 405(b), added subsec. (f).

1986—Subsecs. (d), (e). Pub. L. 99–272 added subsecs. (d) and (e).

1964—Subsec. (c). Pub. L. 88–264 added subsec. (c).

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1994 AMENDMENT

For effective date and applicability of amendment by Pub. L. 103–355, see section 10001 of Pub. L. 103–355, set out as a note under section 251 of Title 41, Public Contracts.

## § 646. Liens

Any interest held by the Administration in property, as security for a loan, shall be subordinate to any lien on such property for taxes due on the property to a State, or political subdivision thereof, in any case where such lien would, under applicable State law, be superior to such interest if such interest were held by any party other than the United States.

(Pub. L. 85–536, § 2[17], July 18, 1958, 72 Stat. 396.)

[1] So in original. Following provision probably should be set flush with par. (1).

PRIOR PROVISIONS

Section 217 of act July 30, 1953, ch. 282, title II, 67 Stat. 239, was previously classified to this section. See section 640 of this title, and Codification note set out under section 631 of this title.

## § 647. Duplication of activities of other Federal departments or agencies

### (a) General prohibition; exception

The Administration shall not duplicate the work or activity of any other department or agency of the Federal Government,,[1] and nothing contained in this chapter shall be construed to authorize any such duplication unless such work or activity is expressly provided for in this chapter. If loan applications are being refused or loans denied by such other department or agency responsible for such work or activity due to administrative withholding from obligation or withholding from apportionment, or due to administratively declared moratorium, then, for purposes of this section, no duplication shall be deemed to have occurred.

### (b) Definitions

As used in this chapter—

(1) ''agricultural enterprises'' means those businesses engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries; and

(2) ''credit elsewhere'' means the availability of sufficient credit from non-Federal sources at reasonable rates and terms, taking into consideration prevailing private rates and terms in the community in or near where the concern transacts business for similar purposes and periods of time.

(Pub. L. 85–536, § 2[18], July 18, 1958, 72 Stat. 396; Pub. L. 93–386, § 5, Aug. 23, 1974, 88 Stat. 746; Pub. L. 94–305, title I, § 112(e), June 4, 1976, 90 Stat. 667; Pub. L. 96–38, title I, § 101(c), July 25, 1979, 93 Stat. 119; Pub. L. 96–302, title I, § 119(c), July 2, 1980, 94 Stat. 841; Pub. L. 98–270, title III, § 303, Apr. 18, 1984, 98 Stat. 160; Pub. L. 98–369, div. B, title IV, § 2401, July 18, 1984, 98 Stat. 1116; Pub. L. 99–272, title XVIII, § 18006(a)(3), Apr. 7, 1986, 100 Stat. 366.)

PRIOR PROVISIONS

Prior similar provisions were contained in section 225, of act July 30, 1953, ch. 282, as added by act Aug. 9, 1955, ch. 628, § 14, 69 Stat. 551, which was previously classified to section 651 of this title. The provisions of section 218 of act July 30, 1953, formerly classified to this section, were transferred to section 2[12] of Pub. L. 85–536, and are classified to section 641 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

1986—Subsec. (a). Pub. L. 99–272 struck out agricultural enterprises exception and proviso that, prior to Oct. 1, 1987, an agricultural enterprise not be eligible for loan assistance under section 636(b)(1) of this title to repair or replace property other than residences and/or personal property unless it is declined for, or would be declined for, emergency loan assistance at substantially similar interest rates from the Farmers Home Administration under subchapter III of the Consolidated Farm and Rural Development Act.

1984—Subsec. (a). Pub. L. 98–369 substituted ''October 1, 1987'' for ''October 1, 1986''.

Pub. L. 98–270 substituted ''October 1, 1986'' for ''October 1, 1983''.

1980—Subsec. (a). Pub. L. 96–302, § 119(c)(1), inserted proviso relating to eligibility for loan assistance prior to October 1, 1983.

Subsec. (b). Pub. L. 96–302, § 119(c)(2), added par. (1) and designated as par. (2) existing definition of ''credit elsewhere''.

1979—Pub. L. 96–38 designated existing provisions as subsec. (a) and added subsec. (b).

1976—Pub. L. 94–305 inserted reference to those enterprises engaged in the production of food and fiber, ranching, and raising of livestock, aquaculture, and all other farming and agricultural related industries.

1974—Pub. L. 93–386 inserted provision authorizing the refusal of loan applications and the denial of loans, for purposes of this section, to be deemed nonduplication of activities.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–270 effective Oct. 1, 1983, see section 313 of Pub. L. 98–270, set out as a note under section 632 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–302 inapplicable to disasters commencing on or before Oct. 1, 1980, see section 119(d) of Pub. L. 96–302, set out as a note under section 636 of this title.

PROGRAMS ADMINISTERED BY THE DEPARTMENT OF COMMERCE

Pub. L. 95–507, § 207, Oct. 24, 1978, 92 Stat. 1767, provided that: ''Nothing in this chapter [meaning chapter 1 of title II of Pub. L. 95–507, consisting of sections 201–206 of Pub. L. 95–507 which amended sections 631, 633, 636, and 637 of this title] is intended to duplicate or limit any programs or projects administered by the Department of Commerce.''

## § 648. Small business development center program authorization

### (a) Grants, contracts and cooperative agreements for establishment of small business development centers and for small business activities and purposes; role of Administration; non-Federal additional amount; amount of grant; eligibility

(1) The Administration is authorized to make grants (including contracts and cooperative agreements) to any State government or any agency thereof, any regional entity, any State-chartered development, credit or finance corporation, any women's business center operating pursuant to section 656 of this title, any public or private institution of higher education, including but not limited to any land-grant college or university, any college or school of business, engineering, commerce, or agriculture, community college or junior college, or to any entity formed by two or more of the above entities (herein referred to as ''applicants'') to assist in establishing small business development centers and to any such body for: small business oriented employment or natural resources development programs; studies, research, and counseling concerning the managing, financing, and operation of small business enterprises; management and technical assistance regarding small business participation in international markets, export promotion and technology transfer; delivery or distribution of such services and infor-

[1] So in original.

mation; and providing access to business analysts who can refer small business concerns to available experts: *Provided*, That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education or a women's business center operating pursuant to section 656 of this title as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education and women's business centers operating pursuant to section 656 of this title to provide services to the small business community. The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.

(2) The Small Business Development Centers 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 businesses.

(3) The Small Business Development Center Program shall be under the general management and oversight of the Administration for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration.

(A) Small business development centers are authorized to form an association to pursue matters of common concern. If more than a majority of the small business development centers which are operating pursuant to agreements with the Administration are members of such an association, the Administration is authorized and directed to recognize the existence and activities of such an association and to consult with it and develop documents (i) announcing the annual scope of activities pursuant to this section, (ii) requesting proposals to deliver assistance as provided in this section and (iii) governing the general operations and administration of the Small Business Development Center Program, specifically including the development of regulations and a uniform negotiated cooperative agreement for use on an annual basis when entering into individual negotiated agreements with small business development centers.

(B) Provisions governing audits, cost principles and administrative requirements for Federal grants, contracts and cooperative agreements which are included in uniform requirements of Office of Management and Budget (OMB) Circulars shall be incorporated by reference and shall not be set forth in summary or other form in regulations.

(C) On an annual basis, the Small Business Development Center shall review and coordinate public and private partnerships and cosponsorships with the Administration for the purpose of more efficiently leveraging available resources on a National[1] and a State basis.

(4) SMALL BUSINESS DEVELOPMENT CENTER PROGRAM LEVEL.—

(A) IN GENERAL.—The Administration shall require as a condition of any grant (or amendment or modification thereof) made to an applicant under this section, that a matching amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant 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.

(C) FUNDING FORMULA.—

(i) IN GENERAL.—Subject to clause (iii), the amount of a formula grant received by a State under this subparagraph shall be equal to an amount determined in accordance with the following formula:

(I) The annual amount made available under section 20(a)[2] for the Small Business Development Center Program, less any reductions made for expenses authorized by clause (v) of this subparagraph, shall be divided on a pro rata basis, based on the percentage of the population of each State, as compared to the population of the United States.

(II) If the pro rata amount calculated under subclause (I) for any State is less than the minimum funding level under clause (iii), the Administration shall determine the aggregate amount necessary to achieve that minimum funding level for each such State.

(III) The aggregate amount calculated under subclause (II) shall be deducted from the amount calculated under subclause (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 to the total population of all such States.

(IV) The aggregate amount deducted under subclause (III) shall be added to the grants of those 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 a grant to any State shall not be reduced to an amount below the minimum funding level.

(ii) GRANT DETERMINATION.—The amount of a grant that a State is eligible to apply for under this subparagraph shall be the amount determined under clause (i), subject to any modifications required under clause (iii), and shall be based on the amount available for the fiscal year in which performance of the

[1] So in original. Probably should not be capitalized.

[2] See References in Text note below.

grant commences, but not including amounts distributed in accordance with clause (iv). The amount of a grant received by a State under any provision of this subparagraph shall not exceed the amount of matching funds from sources other than the Federal Government, as required under subparagraph (A).

(iii) 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 section, as follows:

(I) 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) 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) 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.

(iv) DISTRIBUTIONS.—Subject to clause (iii), if any State does not apply for, or use, its full funding eligibility for a fiscal year, the Administration shall distribute the remaining funds as follows:

(I) If the grant to any State is less than the amount received by that State in fiscal year 2000, the Administration shall distribute such remaining funds, on a pro rata basis, based on the percentage of shortage of each such State, as compared to the total amount of such remaining funds available, to the extent necessary in order to increase the amount of the grant to the amount received by that State in fiscal year 2000, or until such funds are exhausted, whichever first occurs.

(II) If any funds remain after the application of subclause (I), the remaining amount may be distributed as supplemental grants to any State, as the Administration determines, in its discretion, to be appropriate, after consultation with the association referred to in subsection (a)(3)(A) of this section.

(v) USE OF AMOUNTS.—

(I) IN GENERAL.—Of the amounts made available in any fiscal year to carry out this section—

(aa) not more than $500,000 may be used by the Administration to pay expenses enumerated in subparagraphs (B) through (D) of section 20(a)(1);[2] and

(bb) not more than $500,000 may be used by the Administration to pay the examination expenses enumerated in section 20(a)(1)(E).[2]

(II) LIMITATION.—No funds described in subclause (I) may be used for examination expenses under section 20(a)(1)(E)[2] if the usage would reduce the amount of grants made available under clause (i)(I) of this subparagraph 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 small business development center program) or would further reduce the amount of such grants below such amount.

(vi) EXCLUSIONS.—Grants provided to a State by the Administration or another Federal agency to carry out subsection (a)(6) or (c)(3)(G) of this section, or for supplemental grants set forth in clause (iv)(II) of this subparagraph, shall not be included in the calculation of maximum funding for a State under clause (ii) of this subparagraph.

(vii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subparagraph—

(I) $130,000,000 for fiscal year 2005; and

(II) $135,000,000 for fiscal year 2006.

(viii) LIMITATION.—From the funds appropriated pursuant to clause (vii), the Administration shall reserve not less than $1,000,000 in each fiscal year to develop portable assistance for startup and sustainability non-matching grant 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 down sizing or closing, which has resulted in the loss of jobs or small business instability. A non-matching grant under this clause shall not exceed $100,000, and shall be used for small business development center personnel expenses and related small business programs and services.

(ix) STATE DEFINED.—In this subparagraph, the term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(5) FEDERAL CONTRACTS WITH SMALL BUSINESS DEVELOPMENT CENTERS.—

(A) IN GENERAL.—Subject to the conditions set forth in subparagraph (B), a small business development center may enter into a contract with a Federal department or agency to provide specific assistance to small business concerns.

(B) CONTRACT PREREQUISITES.—Before bidding on a contract described in subparagraph (A), a small business development center shall receive approval from the Associate Administrator of the small business development center program of the subject and general scope of the contract. Each approval under subparagraph (A) shall be based upon a determination that the contract will provide assistance to small business concerns and that performance of the contract will not hinder the small business development center in carrying out the terms of the grant received by the small business development center from the Administration.

(C) EXEMPTION FROM MATCHING REQUIREMENT.—A contract under this paragraph shall

not be subject to the matching funds or eligibility requirements of paragraph (4).

(D) ADDITIONAL PROVISION.—Notwithstanding any other provision of law, a contract for assistance under this paragraph shall not be applied to any Federal department or agency's small business, woman-owned business, or socially and economically disadvantaged business contracting goal under section 644(g) of this title.

(6) Any applicant which is funded by the Administration as a Small Business Development Center may apply for an additional grant to be used solely to assist—

(A) with the development and enhancement of exports by small business concerns;

(B) in technology transfer; and

(C) with 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 impacted by base closings or military or corporate downsizing, or in rural or underserved communities;

as provided under subparagraphs (B) through (G) of subsection (c)(3) of this section. Applicants for such additional grants shall comply with all of the provisions of this section, including providing matching funds, except that funding under this paragraph shall be effective for any fiscal year to the extent provided in advance in appropriations Acts and shall be in addition to the dollar program limitations specified in paragraphs (4) and (5). No recipient of funds under this paragraph shall receive a grant which would exceed its pro rata share of a $15,000,000 program based upon the populations to be served by the Small Business Development Center as compared to the total population of the United States. The minimum amount of eligibility for any State shall be $100,000.

(7) PRIVACY REQUIREMENTS.—

(A) 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 section without the consent of such individual or small business concern, unless—

(i) the Administrator is ordered to make such a disclosure by a court in any civil or criminal enforcement action initiated by a Federal or State agency; or

(ii) the Administrator considers such a disclosure to be necessary for the purpose of conducting a financial audit of a small business development center, but a disclosure under this clause shall be limited to the information necessary for such audit.

(B) ADMINISTRATOR USE OF INFORMATION.—This section shall not—

(i) restrict Administrator access to program activity data; or

(ii) prevent the Administrator from using client information to conduct client surveys.

(C) REGULATIONS.—

(i) IN GENERAL.—The Administrator shall issue regulations to establish standards—

(I) for disclosures with respect to financial audits under subparagraph (A)(ii); and

(II) for client surveys under subparagraph (B)(ii), including standards for oversight of such surveys and for dissemination and use of client information.

(ii) MAXIMUM PRIVACY PROTECTION.—Regulations under this subparagraph, shall, to the extent practicable, provide for the maximum amount of privacy protection.

(iii) INSPECTOR GENERAL.—Until the effective date of regulations under this subparagraph, any client survey and the use of such information shall be approved by the Inspector General who shall include such approval in his semi-annual report.

**(b) Area plan inconsistent with applicant's plan: assistance unavailable 1981 through 1983; plan of applicant: submittal to Administration, action on plan, review by Administration, assistance to out-of-State businesses**

(1) Financial assistance shall not be made available to any applicant if approving such assistance would be inconsistent with a plan for the area involved which has been adopted by an agency recognized by the State government as authorized to do so and approved by the Administration in accordance with the standards and requirements established pursuant to this section.

(2) An applicant may apply to participate in the program by submitting to the Administration for approval a plan naming those authorized in subsection (a) of this section to participate in the program, the geographic area to be served, the services that it would provide, the method for delivering services, a budget, and any other information and assurances the Administration may require to insure that the applicant will carry out the activities eligible for assistance. The Administration is authorized to approve, conditionally approve or reject a plan or combination of plans submitted. In all cases, the Administration shall review plans for conformity with the plan submitted pursuant to paragraph (1) of this subsection, and with a view toward providing small business with the most comprehensive and coordinated assistance in the State or part thereof to be served.

(3) At the discretion of the Administration, the Administration is authorized to permit a small business development center to provide advice, information and assistance, as described in subsection (c) of this section, to small businesses located outside the State, but only to the extent such businesses are located within close geographical proximity to the small business development center, as determined by the Administration.

**(c) Problem-solving assistance; development center extension services; staff and access requirements; assistance services; changing services for evolving needs; qualified small business vendors; non-profit entities; cooperation with regional and local offices, etc.; information sharing system**

(1) Applicants receiving grants under this section shall assist small businesses 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.

(2) A small business development center shall provide services as close as possible to small businesses by providing extension services and utilizing satellite locations when necessary. The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve. To the extent possible, it also shall make full use of other Federal and State government programs that are concerned with aiding small business. A small business development center shall have—

(A) a full-time staff, including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;

(B) access to business analysts to counsel, assist, and inform small business clients;

(C) access to technology transfer agents to provide state of art technology to small businesses through coupling with national and regional technology data sources;

(D) access to information specialists to assist in providing information searches and referrals to small business;

(E) access to part-time professional specialists to conduct research or to provide counseling assistance whenever the need arises; and

(F) access to laboratory and adaptive engineering facilities.

(3) Services provided by a small business development center shall include, but shall not be limited to—

(A) furnishing one-to-one individual counseling to small businesses, including—

(i) working with individuals to increase awareness of basic credit practices and credit requirements;

(ii) working with individuals to develop business plans, financial packages, credit applications, and contract proposals;

(iii) working with the Administration to develop and provide informational tools for use in working with individuals on pre-business startup planning, existing business expansion, and export planning; and

(iv) working with individuals referred by the local offices of the Administration and Administration participating lenders;

(B) assisting in technology transfer, research and development, including applied research, and coupling from existing sources to small businesses, including—

(i) working to increase the access of small businesses to the capabilities of automated flexible manufacturing systems;

(ii) 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

(iii) exploring the viability of developing shared production facilities, under appropriate circumstances;

(C) in cooperation with the Department of Commerce and other relevant Federal agencies, actively assisting small businesses in exporting by identifying and developing potential export markets, facilitating export transactions, developing linkages between United States small business firms and prescreened foreign buyers, assisting small businesses to participate in international trade shows, assisting small businesses in obtaining export financing, and facilitating the development or reorientation of marketing and production strategies; where appropriate, the Small Business Development Center and the Administration may work in cooperation with the State to establish a State international trade center for these purposes;

(D) developing a program in conjunction with the Export-Import Bank and local and regional Administration offices that will enable Small Business Development Centers to serve as an information network and to assist small business applicants for Export-Import Bank financing programs, and otherwise identify and help to make available export financing programs to small businesses;

(E) 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 firms doing business, or attempting to develop business, in foreign markets;

(F) in providing assistance under this subsection, applicants shall cooperate with the Department of Commerce and other relevant Federal agencies to increase access to available export market information systems, including the CIMS system;

(G) assisting small businesses to develop and implement 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 such firms' business base due to the actual or projected termination (or reduction) of a Department of Defense program or a contract in support of such program—

(i) by 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 such facility or to the military and civilian personnel currently stationed or working at such facility; and

(II) the termination (or reduction) of a Department of Defense program (or contracts under such program) on the small business concerns participating in such program as a prime contractor, subcontractor or supplier at any tier;

(ii) by developing, in conjunction with appropriate Federal, State, and local governmental entities and other private sector organizations, the parameters of a transition adjustment program adaptable to the needs of individual small business concerns;

(iii) by conducting appropriate programs to inform the affected small business community regarding the anticipated adverse impacts identified under clause (i) and the economic adjustment assistance available to such firms; and

(iv) by assisting small business concerns to develop and implement an individualized transition business plan.[3]

(H) maintaining current information concerning Federal, State, and local regulations that affect small businesses and counsel[4] small businesses on methods of compliance. Counseling and technology development shall be provided when necessary to help small businesses find solutions for complying with environmental, energy, health, safety, and other Federal, State, and local regulations;

(I) coordinating and conducting research into technical and general small business problems for which there are no ready solutions;

(J) providing and maintaining a comprehensive library that contains current information and statistical data needed by small businesses;

(K) 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 in order to help address the various needs of the small business community;

(L) conducting in-depth surveys for local small business groups in order to develop general information regarding the local economy and general small business strengths and weaknesses in the locality;

(M) in cooperation with the Department of Commerce, the Administration and other relevant Federal agencies, actively assisting rural small businesses in exporting by identifying and developing potential export markets for rural small businesses, facilitating export transactions for rural small businesses, developing linkages between United States' rural small businesses and prescreened foreign buyers, assisting rural small businesses to participate in international trade shows, assisting rural small businesses in obtaining export financing and developing marketing and production strategies;

(N) assisting rural small businesses—

(i) in developing marketing and production strategies that will enable them to better compete in the domestic market—

(ii) by providing technical assistance needed by rural small businesses;

(iii) by making available managerial assistance to rural small business concerns; and

(iv) by providing information and assistance in obtaining financing for business startups and expansion;

(O) in conjunction with the United States Travel and Tourism Administration, assist rural small business in developing the tourism potential of rural communities by—

(i) identifying the cultural, historic, recreational, and scenic resources of such communities;

(ii) providing assistance to small businesses in developing tourism marketing and promotion plans relating to tourism in rural areas; and

(iii) assisting small business concerns to obtain capital for starting or expanding businesses primarily serving tourists;

(P) maintaining lists of local and regional private consultants to whom small businesses can be referred;

(Q) providing information to small business concerns regarding compliance with regulatory requirements;

(R) developing informational publications, establishing resource centers of reference materials, and distributing compliance guides published under section 312(a)[5] of the Small Business Regulatory Enforcement Fairness Act of 1996;

(S) providing small business 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 Export Assistance Center program; and

(T) providing information and assistance to small business concerns with respect to establishing drug-free workplace programs on or before October 1, 2006.

(4) 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.

(5) In addition to the methods prescribed in paragraph (2), a small business development center shall utilize and compensate as one of its resources qualified small business vendors, including but not limited to, private management consultants, private consulting engineers and private testing laboratories, to provide services as described in this subsection to small businesses on behalf of such small business development center.

(6) In any State (A) in which the Administration has not made a grant pursuant to paragraph (1) of subsection (a) of this section, or (B) in which no application for a grant has been made by a Small Business Development Center pursuant to paragraph (6) of such subsection within 60 days after the effective date of any grant under subsection (a)(1) of this section to such center or the date the Administration notifies the grantee funded under subsection (a)(1) of this section that funds are available for grant applications pursuant to subsection (a)(6) of this section, whichever date occurs last, the Administration may make grants to a non-profit en-

[3] So in original. The period probably should be a semicolon.

[4] So in original. Probably should be ''counseling''.

[5] See References in Text note below.

tity in that State to carry out the activities specified in paragraph (6) of subsection (a) of this section. Any such applicants shall comply with the matching funds requirement of paragraph (4) of subsection (a) of this section. Such grants shall be effective for any fiscal year only to the extent provided in advance in appropriations Acts, and each State shall be limited to the pro rata share provisions of paragraph (6) of subsection (a) of this section.

(7) In performing the services identified in paragraph (3), the Small Business Development Centers shall work in close cooperation with the Administration's regional and local offices, the local small business community, and appropriate State and local agencies.

(8) The Associate Administrator for Small Business Development Centers, in consultation with the Small Business Development Centers, shall develop and implement an information sharing system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter[6] cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) of this section shall not be applicable to grants or cooperative agreements under this paragraph. The system shall—

(A) allow Small Business Development Centers participating in the program to exchange information about their programs; and

(B) provide information central to technology transfer.

**(d) Enhancing export potential of businesses within State; State Office of International Trade**

Where appropriate, the Small Business Development Centers 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 businesses located within the State. This plan may involve the cofunding and staffing of a State Office of International Trade within the State Small Business Development Center, using joint State and Federal funding, and any other appropriate measures directed at improving the export performance of small businesses within the State.

**(e) Laboratory assistance; reimbursement for services**

Laboratories operated and funded by the Federal Government are authorized and directed to cooperate with the Administration in developing and establishing programs to support small business development centers by making facilities and equipment available; providing experiment station capabilities in adaptive engineering; providing library and technical information processing capabilities; and providing professional staff for consulting. The Administration is authorized to reimburse the laboratories for such services.

**(f) National Science Foundation; cooperation with Administration and Small Business Development Centers; center support**

The National Science Foundation is authorized and directed to cooperate with the Administration and with the Small Business Development Centers in developing and establishing programs to support the centers.

**(g) National Aeronautics and Space Administration and regional technology transfer centers**

The National Aeronautics and Space Administration and regional technology transfer centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in the program.

**(h) 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 report to an official who is not more than one level below the Office of the Administrator and who shall 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 such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS–17 of the General Schedule.

**(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. Duties of the position shall include recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore,[7] selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section.

**(B) Consultation requirements**

In carrying out the duties described in this subsection, the Associate Administrator shall confer with and seek the advice of the Board established by subsection (i) of this section and Administration officials in areas served by the small business development centers; however, 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 such Administration officials.

**(i) National Small Business Development Center Advisory Board; establishment; membership; term; Chairman; advisory and counseling functions; meetings; compensation**

(1) There is established a National Small Business Development Center Advisory Board (here-

[6] So in original. Probably should be "enter into".

[7] So in original. Probably should be "therefor,".

in referred to as ''Board'') which shall consist of nine members appointed from civilian life by the Administrator and who shall be persons of outstanding qualifications known to be familiar and sympathetic with small business needs and problems. No more than three members shall be from universities or their affiliates and six shall be from small businesses or associations representing small businesses. At the time of the appointment of the Board, the Administrator shall designate one-third of the members and at least one from each category whose term shall end in two years from the date of appointment, a second third whose term shall end in three years from the date of appointment, and the final third whose term shall end in four years from the date of appointment. Succeeding Boards shall have three-year terms, with one-third of the Board changing each year.

(2) The Board shall elect a Chairman and advise, counsel, and confer with the Associate Administrator for Small Business Development Centers in carrying out the duties described in this section. The Board shall meet at least semiannually and at the call of the Chairman of the Board. Each member of the Board shall be entitled to be compensated at the rate not in excess of the per diem, equivalent of the highest rate of pay for individuals occupying the position under GS–18 of the General Schedule for each day engaged in activities of the Board and shall be entitled to be reimbursed for expenses as a member of the Board.

**(j) Small business development center advisory board; establishment; chairman; conferences with director on policy**

(1) Each small business development center shall establish an advisory board.

(2) Each small business development center advisory board shall elect a chairman and 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 who may be eligible to receive assistance from, and how local and regional private consultants may participate with the small business development center.

**(k) Program examination and accreditation**

**(1) Examination**

Not later than 180 days after October 22, 1994, the Administration shall develop and implement a biennial programmatic and financial examination of each small business development center established pursuant to this section.

**(2) Accreditation**

The Administration may provide financial support, by contract or otherwise, to the association authorized by subsection (a)(3)(A) of this section for the purpose of developing a small business development center accreditation program.

**(3) Extension or renewal of cooperative agreements**

**(A) In general**

In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and accreditation program conducted pursuant to paragraphs (1) and (2).

**(B) Accreditation requirement**

After September 30, 2000, the Administration may not renew or extend any cooperative agreement with a small business development center unless the center has been approved under the accreditation program conducted pursuant to this subsection, except that the Associate Administrator for Small Business Development Centers may waive such accreditation requirement, in the discretion of the Associate Administrator, upon a showing that the center is making a good faith effort to obtain accreditation.

**(*l*) Contract authority**

The authority to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefore[7] and affording the applicant an opportunity for a hearing, appeal, or other administrative proceeding under the provisions of chapter 5 of title 5. If any contract or cooperative agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis.

**(m) Prohibition on certain fees**

A small business development center shall not impose or otherwise collect a fee or other compensation in connection with the provision of counseling services under this section.

(Pub. L. 85–536, §2[21], as added Pub. L. 96–302, title II, §202, July 2, 1980, 94 Stat. 843; amended Pub. L. 98–395, §2, Aug. 21, 1984, 98 Stat. 1366; Pub. L. 100–418, title VIII, §8006(b), Aug. 23, 1988, 102 Stat. 1557; Pub. L. 100–590, title I, §§134, 135(3), Nov. 3, 1988, 102 Stat. 3006, 3007; Pub. L. 101–515, title V, §§5(a), 6, Nov. 5, 1990, 104 Stat. 2142; Pub. L. 101–574, title II, §201(a)(1), title III, §303, Nov. 15, 1990, 104 Stat. 2818, 2828; Pub. L. 102–366, title II, §§212, 223(a), Sept. 4, 1992, 106 Stat. 998, 1000; Pub. L. 103–81, §9(a), Aug. 13, 1993, 107 Stat. 783; Pub. L. 103–403, title IV, §§402–404, Oct. 22, 1994, 108 Stat. 4190, 4191; Pub. L. 104–66, title II, §2121, Dec. 21, 1995, 109 Stat. 730; Pub. L. 104–121, title II, §214(a), Mar. 29, 1996, 110 Stat. 859; Pub. L. 104–208, div. D, title I, §106, Sept. 30, 1996, 110 Stat. 3009–731; Pub. L. 105–135, title V, §§502, 506(a), Dec. 2, 1997, 111 Stat. 2622, 2624; Pub. L. 105–277, div. C, title IX, §905, Oct. 21, 1998, 112 Stat. 2681–710; Pub. L. 106–554, §1(a)(9) [title V, §503(e), title VIII, §804(b)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, 2763A–703; Pub. L. 107–20, title II, §2203(b), July 24, 2001, 115 Stat. 170; Pub. L. 108–447, div. K, title I, §§122, 142, Dec. 8, 2004, 118 Stat. 3449, 3454.)

REFERENCES IN TEXT

Section 20(a), referred to in subsec. (a)(4)(C)(i)(I), (v), means section 2[20(a)] of Pub. L. 85–536, as amended, which is set out as a note under section 631 of this title.

Section 312(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, referred to in subsec. (c)(3)(R), probably means section 212(a) of Pub. L. 104–121, which is set out in a note under section 601 of Title 5, Government Organization and Employees, because Pub. L. 104–121 does not contain a section 312.

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (h)(1), are classified to section 3301 et seq. of Title 5.

The General Schedule, referred to in subsecs. (h)(1) and (i)(2), is set out under section 5332 of Title 5.

CODIFICATION

October 22, 1994, referred to in subsec. (k)(1), was in the original ''the date of enactment of this subsection'', which was translated as meaning the date of enactment of Pub. L. 103–403, which amended subsec. (k) generally, to reflect the probable intent of Congress.

In subsec. (*l*), ''chapter 7 of title 5'' substituted for ''the Administrative Procedure Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 648 of this title, act July 30, 1953, ch. 282, title II, § 219, 67 Stat. 239, which related to requirements for loans, was omitted as superseded by section 642 of this title. See Codification note set out under section 631 of this title.

A prior section 2[21] of Pub. L. 85–536 was renumbered section 2[37] and is set out as a note under section 631 of this title.

AMENDMENTS

2004—Subsec. (a)(4)(C)(vii) to (ix). Pub. L. 108–447, § 122(b), added cls. (vii) and (viii), redesignated former cl. (viii) as (ix), and struck out heading and text of former cl. (vii). Text read as follows: ''There is authorized to be appropriated to carry out this subparagraph $125,000,000 for each of fiscal years 2001, 2002, and 2003.''

Subsec. (a)(7). Pub. L. 108–447, § 142(a), added par. (7).

Subsec. (c)(3)(T). Pub. L. 108–447, § 122(a), substituted ''October 1, 2006'' for ''October 1, 2003''.

Subsec. (k). Pub. L. 108–447, § 142(b), substituted ''Accreditation'' for ''Certification'' and ''accreditation'' for ''certification'' wherever appearing in headings and text.

2001—Subsec. (a)(4)(C)(v)(II). Pub. L. 107–20 inserted '', or accompanying report language,'' after ''in appropriations Acts''.

2000—Subsec. (a)(4)(C). Pub. L. 106–554, § 1(a)(9) [title VIII, § 804(b)], amended heading and text of subpar. (C) generally, substituting present provisions for provisions providing that the amount of a grant received by a State under this section would be equal to the greater of $500,000, or the sum of the State's pro rata share of the national program, plus $300,000 in fiscal year 1998, $400,000 in fiscal year 1999, and $500,000 in each fiscal year thereafter, provisions relating to pro rata reductions, matching requirement, and exception for grants provided to a small business development center to carry out the provisions of subsection (c)(3)(G), and provisions setting forth appropriations of $85,000,000 for fiscal year 1998, $90,000,000 for fiscal year 1999, and $95,000,000 for fiscal year 2000 and each fiscal year thereafter.

Subsec. (c)(3)(T). Pub. L. 106–554, § 1(a)(9) [title V, § 503(e)], substituted ''2003'' for ''2000''.

1998—Subsec. (c)(3)(T). Pub. L. 105–277 added subpar. (T).

1997—Subsec. (a)(1). Pub. L. 105–135, § 502(a)(1), inserted ''any women's business center operating pursuant to section 656 of this title,'' after ''credit or finance corporation,'', ''or a women's business center operating pursuant to section 656 of this title'' after ''other than an institution of higher education'', and ''and women's business centers operating pursuant to section 656 of this title'' after ''utilize institutions of higher education''.

Subsec. (a)(3). Pub. L. 105–135, § 502(a)(2)(A), substituted ''for the delivery of programs and services to the small business community. Such programs and services shall be jointly developed, negotiated, and agreed upon, with full participation of both parties, pursuant to an executed cooperative agreement between the Small Business Development Center applicant and the Administration'' for '', but with recognition that a partnership exists under this section between the Administration and the applicant for the delivery of assistance to the small business community. Services shall be provided pursuant to a negotiated cooperative agreement with full participation of both parties''.

Subsec. (a)(3)(C). Pub. L. 105–135, § 502(a)(2)(B), added subpar. (C).

Subsec. (a)(4)(C)(i). Pub. L. 105–135, § 502(a)(3)(A), added cl. (i) and struck out heading and text of former cl. (i). Text read as follows: ''Except as provided in clause (ii), no State receiving funds under this section shall receive a grant that exceeds—

''(I) for fiscal year 1995, the sum of such State's pro rata share of a national program based upon the population of the State as compared to the total population in the United States, and $125,000; or

''(II) in each succeeding fiscal year, the sum of such State's pro rata share of a national program based upon the population of the State as compared to the total population in the United States, and $200,000.''

Subsec. (a)(4)(C)(iii). Pub. L. 105–135, § 502(a)(3)(B), added cl. (iii) and struck out former cl. (iii) which read as follows:

''(iii) AMOUNT.—The amount of the national program shall be—

''(I) $70,000,000 through September 30, 1996;

''(II) $77,500,000 from October 1, 1996 through September 30, 1997; and

''(III) $85,000,000 beginning October 1, 1997.''

Subsec. (a)(6)(C). Pub. L. 105–135, § 502(a)(4), added subpar. (C).

Subsec. (c)(3). Pub. L. 105–135, § 502(b)(4), redesignated closing provisions as par. (4). Former par. (4) redesignated (5).

Subsec. (c)(3)(A). Pub. L. 105–135, § 502(b)(1)(A), substituted ''businesses, including—'' for ''businesses;'' in introductory provisions and added cls. (i) to (iv).

Subsec. (c)(3)(B). Pub. L. 105–135, § 502(b)(1)(B), realigned margins.

Subsec. (c)(3)(C). Pub. L. 105–135, § 502(b)(1)(B), (C), realigned margins and inserted ''and the Administration'' after ''Small Business Development Center''.

Subsec. (c)(3)(D) to (G), (M) to (O), (Q), (R). Pub. L. 105–135, § 502(b)(1)(B), realigned margins.

Subsec. (c)(3)(S). Pub. L. 105–135, § 506(a), added subpar. (S).

Subsec. (c)(4). Pub. L. 105–135, § 502(b)(4), redesignated closing provisions of par. (3) as (4). Former par. (4) redesignated (5).

Subsec. (c)(5). Pub. L. 105–135, § 502(b)(3), redesignated par. (4) as (5). Former par. (5) redesignated (6).

Pub. L. 105–135, § 502(b)(2), realigned margins, substituted ''subsection (a)(1) of this section'' for ''paragraph (a)(1)'' and ''whichever date occurs last,'' for ''which ever date occurs last,,''.

Subsec. (c)(6) to (8). Pub. L. 105–135, § 502(b)(3), redesignated pars. (5) to (7) as (6) to (8), respectively.

Subsec. (*l*). Pub. L. 105–135, § 502(c), inserted at end ''If any contract or cooperative agreement under this section with an entity that is covered by this section is not renewed or extended, any award of a successor contract or cooperative agreement under this section to another entity shall be made on a competitive basis.''

Subsec. (m). Pub. L. 105–135, § 502(d), added subsec. (m).

1996—Subsec. (c)(3)(Q), (R). Pub. L. 104–121 added subpars. (Q) and (R).

Subsec. (c)(7). Pub. L. 104–208, §106(a)(2)(A), substituted ''Associate Administrator for Small Business Development Centers'' for ''Deputy Associate Administrator of the Small Business Development Center program''.

Subsec. (h). Pub. L. 104–208, §106(a)(1), amended subsec. (h) generally. Prior to amendment, subsec. (h) read as follows:

''(h)(1) The Administrator shall appoint a Associate Administrator for Small Business Development Centers who shall report to an official who is not more than one level below the Office of the Administrator and who shall 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 such title relating to classification and General Schedule pay rates, but at a rate not less than the rate of GS–17 of the General Schedule.

''(2) The sole responsibility of the Associate Administrator for Small Business Development Centers shall be to administer the small business development center program. Duties of the position shall include, but are not limited to, recommending the annual program budget, reviewing the annual budgets submitted by each applicant, establishing appropriate funding levels therefore, selecting applicants to participate in this program, implementing the provisions of this section, maintaining a clearinghouse to provide for the dissemination and exchange of information between small business development centers and conducting audits of recipients of grants under this section. The Associate Administrator for Small Business Development Centers shall confer with and seek the advise and counsel of the Board in carrying out the responsibilities described in this subsection.''

Subsec. (i)(2). Pub. L. 104–208, §106(a)(2)(B), substituted ''Associate Administrator for Small Business Development Centers'' for ''Deputy Associate Administrator for Management Assistance''.

Subsec. (k)(3). Pub. L. 104–208, §106(b), amended heading and text of par. (3) generally. Prior to amendment, text read as follows: ''In extending or renewing a cooperative agreement of a small business development center, the Administration shall consider the results of the examination and certification program conducted pursuant to paragraphs (1) and (2).''

Subsec. (*l*). Pub. L. 104–208, §106(c), amended heading and text of subsec. (*l*) generally. Prior to amendment, text read as follows: ''The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriations Acts. After the administration has entered a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate or fail to renew or extend any such contract unless the Administration provides the applicant with written notification setting forth the reasons therefor and affording the applicant an opportunity for a hearing, appeal or other administrative proceeding under the provisions of chapter 7 of title 5.''

1995—Subsec. (g). Pub. L. 104–66 amended subsec. (g) generally. Prior to amendment, subsec. (g) read as follows: ''The National Aeronautics and Space Administration and industrial application centers supported by the National Aeronautics and Space Administration are authorized and directed to cooperate with small business development centers participating in this program. The National Aeronautics and Space Administration shall report annually on the performance of such industrial application centers with recommendations to the Administration and the Congress on how such industrial application centers can be strengthened and expanded. The National Aeronautics and Space Administration shall include in its report to Congress information on the ability of industrial application centers to interact with the Nation's small business community and recommendations to the Administration on continued funding.''

1994—Subsec. (a)(4). Pub. L. 103–403, §402, amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''Except as provided in paragraph (4), the Administration shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section that an additional amount (excluding any fees collected from recipients of such assistance) equal to the amount of such grant be provided from sources other than the Federal Government: *Provided*, That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall such indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount: *Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus $100,000 for each State, but no State shall receive less than $200,000.''

Subsec. (a)(5). Pub. L. 103–403, §403, amended par. (5) generally, substituting present provisions for former provisions which required matching amount from non-Federal sources equal to amount of Federal grant.

Subsec. (k). Pub. L. 103–403, §404, amended subsec. (k) generally. Prior to amendment, subsec. (k) read as follows: ''Within six months of August 21, 1984, the Administration shall develop and implement a program proposal for onsite evaluation of each Small Business Development Center. Such evaluation shall be conducted at least once every two years and shall provide for the participation of a representative of at least one other Small Business Development Center on a cost-reimbursement basis.''

1993—Subsec. (c)(7). Pub. L. 103–81 substituted ''system. Subject to amounts approved in advance in appropriations Acts, the Administration may make grants or enter cooperative agreements with one or more centers to carry out the provisions of this paragraph. Said grants or cooperative agreements shall be awarded for periods of no more than five years duration. The matching funds provisions of subsection (a) of this section shall not be applicable to grants or cooperative agreements under this paragraph. The system shall'' for ''system which will'' in introductory provisions.

1992—Subsec. (a)(3)(A), (B). Pub. L. 102–366, §223(a), added subpars. (A) and (B).

Subsec. (c)(3)(D) to (G). Pub. L. 102–366, §212, redesignated former subpars. (E) to (G) as (D) to (F), respectively, added subpar. (G), and struck out former subpar. (D) which read as follows: ''assisting small businesses in developing and implementing marketing and production strategies that will enable them to better compete within the domestic market;''.

1990—Subsec. (a)(1). Pub. L. 101–515, §6, struck out period at end of first sentence and inserted '': *Provided*, That after December 31, 1990, the Administration shall not make a grant to any applicant other than an institution of higher education as a Small Business Development Center unless the applicant was receiving a grant (including a contract or cooperative agreement) on such date. The Administration shall require any applicant for a small business development center grant with performance commencing on or after January 1, 1992 to have its own budget and to primarily utilize institutions of higher education to provide services to the small business community.''

Subsec. (a)(4). Pub. L. 101–515, §5(a), and Pub. L. 101–574, §201(a)(1), amended par. (4) identically, substituting ''*Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $70,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population of the United States, plus $100,000 for each State, but no State shall receive less than $200,000.'' for ''*Provided further*, That no recipient of funds under this section shall receive a grant which would exceed its pro rata share of a $65,000,000 program based upon the population to be served by the Small Business Development Center as compared to the total population in the United States, or $200,000, whichever is greater.''

Subsec. (c)(3)(M) to (P). Pub. L. 101–574, § 303, added subpars. (M) to (O) and redesignated former subpar. (M) as (P).

1988—Subsec. (a)(1). Pub. L. 100–418, § 8006(b)(1), inserted provision relating to management and technical assistance regarding small business participation in international markets, export promotion and technology transfer.

Subsec. (a)(2) to (6). Pub. L. 100–418, § 8006(b)(2), (3), added par. (2), redesignated former pars. (2) to (4) as (3) to (5), respectively, and added par. (6).

Subsec. (c)(3)(B) to (M). Pub. L. 100–418, § 8006(b)(4), (5), added subpars. (B) to (G), redesignated former subpars. (C) to (H) as (H) to (M), respectively, and struck out former subpar. (B) which read as follows: ''assisting in technology transfer, research, and coupling from existing sources to small businesses;''.

Subsec. (c)(5). Pub. L. 100–590, § 135(3), inserted ''or the date the Administration notifies the grantee funded under subsection (a)(1) of this section that funds are available for grant applications pursuant to subsection (a)(6) of this section, which ever date occurs last,'' after ''such center''.

Pub. L. 100–418, § 8006(b)(6), added par. (5).

Subsec. (c)(6), (7). Pub. L. 100–418, § 8006(b)(6), added pars. (6) and (7).

Subsecs. (d) to (g). Pub. L. 100–418, § 8006(b)(7), added subsec. (d) and redesignated former subsecs. (d) to (f) as (e) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 100–590, § 134(1), (2), which directed that subsec. (g) be amended by substituting ''Associate Administrator for Small Business Development Centers'' for ''Deputy Associate Administrator for Management Assistance'' in three places, and in par. (1) by substituting ''an official who is not more than one level below the Office of the Administrator'' for ''the Associate Administrator for Management Assistance'', was executed to subsec. (h) to reflect the probable intent of Congress and the intervening redesignation of subsec. (g) as (h) by section 8006(b)(7) of Pub. L. 100–418.

Pub. L. 100–418, § 8006(b)(7), redesignated former subsec. (g) as (h). Former subsec. (h) redesignated (i).

Subsecs. (i) to (k). Pub. L. 100–418, § 8006(b)(7), redesignated former subsecs. (h) to (j) as (i) to (k), respectively. Former subsec. (k) redesignated (*l*).

Subsec. (*l*) Pub. L. 100–590, § 134(3), which directed that subsec. (k) be amended by inserting provisions which prohibited Administration from suspending, terminating or failing to renew or extend any contract without written notification and opportunity for hearing, appeal or other administrative proceeding, was executed to subsec. (*l*) to reflect the probable intent of Congress and the intervening redesignation of subsec. (k) as (*l*) by section 8006(b)(7) of Pub. L. 100–418.

Pub. L. 100–418, § 8006(b)(7), redesignated former subsec. (k) as (*l*).

1984—Subsec. (a)(1). Pub. L. 98–395, § 2(1), inserted ''The term of such grants shall be made on a calendar year basis or to coincide with the Federal fiscal year.''

Subsec. (a)(2) to (4). Pub. L. 98–395, § 2(2), added pars. (2) to (4). Former par. (2), which contained provisions similar to par. (3), was struck out.

Subsec. (b)(1). Pub. L. 98–395, § 2(3), substituted ''Financial'' for ''During fiscal years 1981, 1982, and 1983, financial''.

Subsec. (c)(2). Pub. L. 98–395, § 2(4), inserted in provisions preceding subpar. (A) ''The facilities and staff of each Small Business Development Center shall be located in such places as to provide maximum accessibility and benefits to the small businesses which the center is intended to serve.''

Subsec. (c)(2)(A). Pub. L. 98–395, § 2(5), substituted ''including a full-time director who shall have the authority to make expenditures under the center's budget and who shall manage the program activities;'' for ''including a staff director to manage the program activities.''

Subsec. (e). Pub. L. 98–395, § 2(6), substituted provisions authorizing the National Science Foundation to cooperate with the Administration and with Small Business Development Centers in developing and establishing programs to support the centers, for former provisions which related to the National Science Foundation and innovation centers, and reports to be made to the Administration and Congress.

Subsec. (h)(2). Pub. L. 98–395, § 2(7), substituted ''at least semiannually'' for ''at least quarterly''.

Subsec. (i)(1). Pub. L. 98–395, § 2(8), substituted ''shall'' for ''may''.

Subsec. (j). Pub. L. 98–395, § 2(9), substituted provisions mandating that the Administration develop and implement program proposals for onsite evaluation of each Small Business Development Center for provisions which related to the establishment of program evaluation plans and their submission to Congressional committees.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

EFFECTIVE DATE OF 1996 AMENDMENTS

Amendment by Pub. L. 104–208 effective Oct. 1, 1996, see section 3 of Pub. L. 104–208, set out as a note under section 633 of this title.

Amendment by Pub. L. 104–121 effective on expiration of 90 days after Mar. 29, 1996, see section 216 of Pub. L. 104–121, set out in a Small Business Regulatory Fairness note under section 601 of Title 5, Government Organization and Employees.

EFFECTIVE DATE OF 1990 AMENDMENTS

Section 201(a)(2) of Pub. L. 101–574 provided that: ''The amendment made by paragraph (1) [amending this section] shall apply to contracts, grants, or cooperative agreements for performance commencing on or after October 1, 1991. Contracts, grants, or cooperative agreements the performance of which commences before October 1, 1991, shall receive funding for the entire term of performance without regard to the amendment made by paragraph (1) and according to the State's pro rata share of a $65,000,000 program as computed on the effective date of this section [Nov. 15, 1990] under population estimates used for calendar year 1990 agreements, plus $50,000 for each State, but no State shall receive less than $200,000.''

Section 5(c) of Pub. L. 101–515 provided that: ''The amendments to the second proviso in subsection (a)(4) [15 U.S.C. 648(a)(4)] made by subsection (a) of this section shall apply to contracts, grants or cooperative agreements for performance commencing on or after October 1, 1991; contracts, grants or cooperative agreements for performance commencing prior thereto shall receive funding for the entire term of performance without regard to this amendment and according to the State's pro rata share of a $65,000,000 program as computed on the effective date of this section [Nov. 5, 1990] under population estimates used for calendar year 1990 agreements, plus $50,000 for each State, but no State shall receive less than $200,000.''

EFFECTIVE AND TERMINATION DATES

Section 204 of Pub. L. 96–302, as amended by Pub. L. 98–177, Nov. 29, 1983, 97 Stat. 1125; Pub. L. 98–395, § 4, Aug. 21, 1984, 98 Stat. 1368; Pub. L. 101–162, title V, (6), Nov. 21, 1989, 103 Stat. 1028, which provided for the repeal, effective Oct. 1, 1991, of sections 201 and 202 of Pub. L. 96–302, which enacted this section and provisions set out as a note under section 631 of this title and redesignated section 2[21] as 2[30] of Pub. L. 85–536, set out as a note under section 631 of this title, was repealed by Pub. L. 101–515, § 5(b), Nov. 5, 1990, 104 Stat. 2142, and Pub. L. 101–574, title II, § 201(b), Nov. 15, 1990, 104 Stat. 2818.

Section effective Oct. 1, 1980, see section 507 of Pub. L. 96–302, set out as an Effective Date of 1980 Amendment note under section 631 of this title.

SHORT TITLE

For short title of title II of Pub. L. 96–302 as the Small Business Development Center Act of 1980, see Short Title of 1980 Amendment note set out under section 631 of this title.

REGULATIONS

Pub. L. 102–366, title II, § 223(b), Sept. 4, 1992, 106 Stat. 1000, as amended by Pub. L. 103–81, § 9(c), Aug. 13, 1993, 107 Stat. 783, provided that not later than 180 days after Sept. 4, 1992, the Administrator of the Small Business Administration was to submit to the Committees on Small Business and the Committees on Appropriations of the Senate and the House of Representatives proposed regulations for the Small Business Development Center Program authorized by this section.

SMALL BUSINESS TECHNOLOGY TRANSFER DEMONSTRATION PROGRAM

Pub. L. 101–574, title II, § 231, Nov. 15, 1990, 104 Stat. 2823, as amended by Pub. L. 102–564, title III, § 302, Oct. 28, 1992, 106 Stat. 4262,established within the Small Business Administration a Small Business Technology Transfer Demonstration Programto demonstrate the feasibility of providing small businesses with education, training, and technical assistance with respect to technology transfer and application and provided that the Program would terminate on Sept. 30, 1995.

REFERENCES IN OTHER LAWS TO GS–16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.

### § 648a. Repealed. Pub. L. 102–140, title VI, § 609(e), Oct. 28, 1991, 105 Stat. 826

Section, Pub. L. 85–536, § 2[21A], as added Pub. L. 101–515, title V, § 9(a), Nov. 5, 1990, 104 Stat. 2144, related to Small Business Development Center Technical Assistance Program.

EFFECTIVE DATE OF REPEAL; TERMINATION OF FUNDING

Section 609(e) of Pub. L. 102–140 provided that: ''Notwithstanding any other law, no funds shall be appropriated to carry out section 21A of the Small Business Act [15 U.S.C. 648a] after September 30, 1991, and such section is repealed October 1, 1992.''

### § 649. Office of International Trade

**(a) Establishment**

There is established within the Administration an Office of International Trade which shall implement the programs pursuant to this section.

**(b) Development of distribution network; marketing of programs and dissemination of information; bilingual job applicants**

The Office, working in close cooperation with the Department of Commerce and other relevant Federal agencies, Small Business Development Centers engaged in export promotion efforts, regional and local Administration offices, the small business community, and relevant State and local export promotion programs, shall—

(1) 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;

(2) assist in the aggressive marketing of these programs and the dissemination of marketing information, including computerized marketing data, to the small business community; and

(3) give preference in hiring or approving the transfer of any employee into the Office or to a position described in paragraph (8) below to otherwise qualified applicants who are fluent in a language in addition to English. Such employees shall accompany foreign trade missions if designated by the director of the Office and shall be available as needed to translate documents, interpret conversations and facilitate multilingual transactions including providing referral lists for translation services if required.

**(c) Promotion of sales opportunities for goods and services abroad**

The Office shall promote sales opportunities for small business goods and services abroad. To accomplish this objective the office shall—

(1) in cooperation with the Department of Commerce, other relevant agencies, regional and local Administration offices, the Small Business Development Center network, and State programs, develop a mechanism for (A) identifying sub-sectors of the small business community with strong export potential; (B) identifying areas of demand in foreign markets; (C) prescreening foreign buyers for commercial and credit purposes; and (D) 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;

(2) in cooperation with the Department of Commerce, actively assist small businesses in the formation and utilization of export trading companies, export management companies and research and development pools authorized under section 638 of this title;

(3) 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;

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

(A) 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 Produce figures) and disseminate that data to the public and to Congress;

(B) make recommendations to the Secretary of Commerce and to Congress regarding revision of the SIC codes to encompass industries currently overlooked and to create SIC codes for export trading companies and export management companies;

(C) improve the utility and accessibility of existing export promotion programs for small businesses; and

(D) increase the accessibility of the Export Trading Company contact facilitation service;

(5) make available to the small business community information regarding conferences on exporting and international trade sponsored by the public and private sector.[1]

(6) provide small businesses with access to current and complete export information by—

(A) making available, at the Administration's regional offices through cooperation with the Department of Commerce, export information, including, but not limited to, the worldwide information and trade system and world trade data reports;

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

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

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

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

(8) facilitate decentralized delivery of export information and assistance to small businesses by assigning full-time export development specialists to each Administration regional office and assigning primary responsibility for export development to one person in each district office. Such specialists shall—

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

(B) maintain a current directory of all programs which provide export information and assistance to small businesses within 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 businesses engaged in exports; and

(E) within one hundred and eighty days of their appointment, participate in training programs designed by the Administrator, in conjunction with the Department of Commerce and other Federal departments and agencies, to study export programs and to examine small businesses' needs for export information and assistance.

[1] So in original. The period probably should be a semicolon.

**(d) Access to export and pre-export financing programs**

The Office shall work in cooperation with the Export-Import Bank of the United States, the Department of Commerce, other relevant 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 businesses 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. To accomplish this goal, the Office shall work in cooperation with the Export-Import Bank and the small business community, including small business trade associations, to—

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

(2) identify financing available under various Export-Import Bank programs, and aggressively market those programs to small businesses;

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

(4) promote greater participation by private financial institutions, particularly those institutions already participating in loan programs under this chapter, in export finance; and

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

**(e) Counseling small businesses; proceedings related to trade laws; access to trade remedy proceedings**

The Office shall—

(1) work in cooperation with other Federal agencies and the private sector to counsel small businesses 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 businesses.

**(f) Annual reports to Congress**

The Office shall report to the Committees on Small Business of the House of Representatives and the Senate on an annual basis as to its progress in implementing the requirements under this section.

**(g) Cooperative studies and reports to Congressional committees on selected issues; recommendations**

The Office, in cooperation, where appropriate, with the Division of Economic Research of the Office of Advocacy, and with other Federal agencies, shall undertake studies regarding the following issues and shall report to the Committees on Small Business of the House of Representatives and the Senate, and to other rel-

evant Committees of the House and Senate within 6 months after August 23, 1988, with specific recommendations on—

(1) the viability and cost of establishing an annual, competitive small business export incentive program similar to the Small Business Innovation Research program and alternative methods of structuring such a program;

(2) methods of streamlining trade remedy proceedings to increase access for, and reduce expenses incurred by, smaller firms;

(3) methods of improving the current small business foreign sales corporation tax incentives and providing small businesses with greater benefits from this initiative;

(4) methods of identifying potential export markets for United States small businesses; maintaining and disseminating current foreign market data; and devising a comprehensive export marketing strategy for United States small business goods and services, and shall include data on the volume and dollar amount of goods and services, identified by type, imported by United States trading partners over the past 10 years; and

(5) the results of a survey of major United States trading partners to identify the domestic policies, programs and incentives, and the private sector initiatives, which exist to encourage the formation and growth of small business.

(Pub. L. 85–536, § 2[22], as added Pub. L. 96–481, title I, § 113(a), Oct. 21, 1980, 94 Stat. 2323; amended Pub. L. 100–418, title VIII, § 8003, Aug. 23, 1988, 102 Stat. 1554.)

PRIOR PROVISIONS

A prior section 649, act July 30, 1953, ch. 282, title II, § 220, 67 Stat. 240, which required a fair charge for use of Government-owned property, was omitted as superseded by section 643 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

1988—Subsecs. (b) to (g). Pub. L. 100–418 added subsec. (b), redesignated former subsec. (b) as (c) and added pars. (1) to (5) and redesignated former pars. (1) to (3) as (6) to (8), respectively, and added subsecs. (d) to (g).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE

Section 113(b) of Pub. L. 96–481 provided that: ''The amendment made by subsection (a) [enacting this section] shall take effect on October 1, 1980, or the date of enactment of this Act [Oct. 21, 1980], whichever occurs later.''

SHORT TITLE

For short title of part B of title I of Pub. L. 96–481 as the Small Business Export Expansion Act of 1980, see Short Title of 1980 Amendment note set out under section 631 of this title.

CONGRESSIONAL DECLARATION OF POLICY

Section 111 of title I of Pub. L. 96–481 provided that: ''(a) The Congress finds and declares that—

''(1) a strong export policy is essential to the health and well-being of the United States economy;

''(2) exports of goods and services account for one out of every six jobs in the manufacturing sector and 10 per centum of the gross national product.

''(3) every billion dollars in new exports is estimated to provide forty thousand jobs;

''(4) there is increased and fierce competition in international markets to United States goods and services;

''(5) small businesses account for no more than 10 per centum of all United States export sales;

''(6) Federal Government programs are not sufficiently responsive to the needs of small business for export education and development of overseas marketing opportunities necessary to insure that small businesses realize their potential; and

''(7) it is in the national interest to systematically and consistently promote and encourage small business participation in international markets.

''(b) It is therefore the purpose of this part [enacting this section, amending section 636 of this title, and enacting provisions set out as notes under sections 631 and 649 of this title] to encourage and promote small business exporting by—

''(1) providing educational and marketing assistance to small businesses;

''(2) insuring better access to export information and assistance for small businesses by upgrading and expanding the export development programs and services of the Department of Commerce and the Small Business Administration; and

''(3) promoting the competitive viability of such firms in export trade and encouraging increased tourism in the United States by creating a program to provide limited financial, technical, and management assistance as may be necessary.''

## § 649a. Omitted

CODIFICATION

Section, Pub. L. 98–481, title III, § 301(a)–(d), Oct. 21, 1980, 94 Stat. 2330, which related to establishment, staffing, functions, evaluation, and reporting requirements of export promotion centers, terminated Oct. 1, 1983.

EFFECTIVE AND TERMINATION DATES

Section 301(e) of Pub. L. 96–481 provided that: ''This section shall take effect on October 1, 1980, or on the date of the enactment of this section [Oct. 21, 1980] whichever occurs later and shall expire on October 1, 1983.''

## § 649b. Grants, contracts and cooperative agreements for international marketing programs

### (a) Limitations and restrictions

The Secretary of Commerce (hereinafter referred to as the ''Secretary'') is authorized to make grants (including contracts and cooperative agreements) to a qualified applicant to encourage the development and implementation of a small business international marketing program (hereinafter referred to as ''the program''). Each qualified applicant under sections 649a to 649d of this title may receive a Federal grant not to exceed $150,000 annually for each of three years: *Provided*, That not more than one-third of these Federal funds may be used for the purpose of hiring personnel. Nothing in this section shall be construed as authorizing the Secretary to enter into contracts or incur obligations except to such extent and in such amounts as are provided in appropriation Acts.

### (b) Eligibility

(1) To be eligible for a grant under this section, an applicant proposing to carry out a small

business international marketing program must submit to the Secretary an application demonstrating, at a minimum:

(A) the geographical area to be served;

(B) the number of firms to be assisted;

(C) the staff required to administer the program;

(D) the means to counsel small businesses interested in pursuing export sales, including providing information concerning available financing, credit insurance, tax treatment, potential markets and marketing assistance, export pricing, shipping, documentation, and foreign financing and business customs;

(E) the ability to provide market analysis of the export potential of small business concerns; and

(F) the capability for developing contacts with potential foreign customers and distributors for small business and their products, including arrangements and sponsorship of foreign trade missions for small business concerns to meet with identified potential customers, distributors, sales representatives, and organizations interested in licensing or joint ventures: *Provided, however*, That no portion of any Federal funds may be used to directly underwrite any small business participation in foreign trade missions abroad.

(2) Program services shall be provided to small business concerns through outreach services at the most local level practicable.

(3) Each small business international marketing program shall have a full-time staff director to manage program activities, and access to export specialists to counsel and to assist small business clients in international marketing.

**(c) Advisory board establishment**

(1) Each small business international marketing program shall establish an advisory board of nine members to be appointed by the staff director of the program, not less than five members of whom shall be small business persons or representatives of small business associations.

(2) Each advisory board shall elect a chairman and shall advise, counsel, and confer with the staff director of the program on all policy matters pertaining to the operation of the program (including who may be eligible to receive assistance, ways to promote the sale of United States products and services in foreign markets or to encourage tourism in the United States, and how to maximize local and regional private consultant participation in the program).

**(d) Grant requirements**

The Secretary shall require, as a condition to any grant (or amendment or modification thereof) made to an applicant under this section, that a sum equal to the amount of such grant be provided from sources other than the Federal Government: *Provided*, That the additional amount shall not include any amount of indirect costs or in-kind contributions paid for under any Federal program, nor shall indirect costs or in-kind contributions exceed 50 per centum of the non-Federal additional amount.

**(e) Program evaluation; reports**

The Secretary shall develop a plan to evaluate programs approved under this section which shall only—

(1) determine the impact of small business international marketing programs on those small businesses assisted;

(2) determine the amount of export sales generated by small businesses assisted through such programs; and

(3) make recommendations concerning continuation and/or expansion of the program and possible improvements in the program structure. Such evaluation shall be submitted to the Congress by October 1, 1982.

**(f) Recipients' duty to furnish information**

For the purpose of the evaluation under subsection (e) of this section, the Secretary is authorized to require any small business international marketing program, or party receiving assistance under this section, to furnish such information as is deemed appropriate to complete the required evaluation.

**(g) "Applicant" defined**

As used in this section, the term ''applicant'' means any State government or agency or instrumentality thereof, any Small Business Administration—designated small business development center, any for profit small business, any nonprofit corporation, any regional commission, or any combination of such entities, which will carry out a small business international marketing program.

**(h) Contract authority**

The authority to enter into contracts shall be in effect for each fiscal year only to the extent or in the amounts as are provided in advance in appropriation Acts.

(Pub. L. 96–481, title III, § 302, Oct. 21, 1980, 94 Stat. 2331.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

## § 649c. Authorization of appropriations

At least one small business international program shall be established within each region of the Department of Commerce. There are authorized to be appropriated to the Secretary $1,500,000 for each fiscal year 1981, 1982, and 1983, to carry out the program established in section 649b of this title.

(Pub. L. 96–481, title III, § 303, Oct. 21, 1980, 94 Stat. 2332.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

### § 649d. Central information clearinghouse

The Secretary through the International Trade Administration, shall, only to such extent and in such amounts as are provided in appropriation Acts on and after October 1, 1980, maintain a central clearinghouse to provide for the collection, dissemination, and exchange of information between programs established pursuant to sections 649a and 649b of this title, the Office of International Trade of the Small Business Administration, and other interested concerns.

(Pub. L. 96–481, title III, § 304, Oct. 21, 1980, 94 Stat. 2333.)

CODIFICATION

Section was not enacted as part of the Small Business Act which comprises this chapter.

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

**(a) In general**

The Administrator is authorized—

(1) to supervise the safety and soundness of small business lending companies and non-Federally regulated lenders;

(2) with respect to small business lending companies to set capital standards to regulate, to examine, and to enforce laws governing such companies, in accordance with the purposes of this chapter; and

(3) with respect to non-Federally regulated lenders to regulate, to examine, and to enforce laws governing the lending activities of such lenders under section 636(a) of this title in accordance with the purposes of this chapter.

**(b) Capital directive**

**(1) In general**

If the Administrator determines that a small business lending company is being operated in an imprudent manner, the Administrator may, in addition to any other action authorized by law, issue a directive to such company to increase capital to such level as the Administrator determines will result in the safe and sound operation of such company.

**(2) Delegation**

The Administrator may not delegate the authority granted under paragraph (1) except to an Associate Deputy Administrator.

**(3) Regulations**

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

**(c) Civil action**

If a small business lending company violates this chapter, the Administrator may institute a civil action in an appropriate district court to terminate the rights, privileges, and franchises of the company under this chapter.

**(d) Revocation or suspension of loan authority**

(1) The Administrator may revoke or suspend the authority of a small business lending company or a non-Federally regulated lender to make, service or liquidate business loans authorized by section 636(a) of this title—

(A) for false statements knowingly made in any written submission required under this chapter;

(B) for omission of a material fact from any written submission required under this chapter;

(C) for willful or repeated violation of this chapter;

(D) for willful or repeated violation of any condition imposed by the Administrator with respect to any application, request, or agreement under this chapter; or

(E) for violation of any cease and desist order of the Administrator under this section.

(2) The Administrator may revoke or suspend authority under paragraph (1) only after a hearing under subsection (f) of this section. The Administrator may delegate power to revoke or suspend authority under paragraph (1) only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(A) The Administrator, after finding extraordinary circumstances and in order to protect the financial or legal position of the United States, may issue a suspension order without conducting a hearing pursuant to subsection (f) of this section. If the Administrator issues a suspension under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f) of this section.

(B) Any suspension under paragraph (1) shall remain in effect until the Administrator makes a decision pursuant to subparagraph (4) to permanently revoke the authority of the small business lending company or non-Federally regulated lender, suspend the authority for a time certain, or terminate the suspension.

(3) The small business lending company or non-Federally regulated lender must notify borrowers of a revocation and that a new entity has been appointed to service their loans. The Administrator or an employee of the Administration designated by the Administrator may provide such notice to the borrower.

(4) Any revocation or suspension under paragraph (1) shall be made by the Administrator except that the Administrator shall delegate to an administrative law judge as that term is used in section 3105 of title 5 the authority to conduct any hearing required under subsection (f) of this section. The Administrator shall base the decision to revoke on the record of the hearing.

**(e) Cease and desist order**

(1) Where a small business lending company, a non-Federally regulated lender, or other person violates this chapter or is engaging or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, the Administrator may order, after the opportunity for hearing pursuant to subsection (f) of this section, the company, lender, or other person to cease and desist from such action or failure to act. The Administrator may delegate the authority under the preceding sentence only to the Deputy Administrator and only if the Administrator is unavailable to take such action.

(2) The Administrator, after finding extraordinary circumstances and in order to protect the

financial or legal position of the United States, may issue a cease and desist order without conducting a hearing pursuant to subsection (f) of this section. If the Administrator issues a cease and desist order under the preceding sentence, the Administrator shall within two business days follow the procedures set forth in subsection (f) of this section.

(3) The Administrator may further order such small business lending company or non-Federally regulated lender or other person to take such action or to refrain from such action as the Administrator deems necessary to insure compliance with this chapter.

(4) A cease and desist order under this subsection may also provide for the suspension of authority to lend in subsection (d) of this section.

**(f) Procedure for revocation or suspension of loan authority and for cease and desist order**

(1) Before revoking or suspending authority under subsection (d) of this section or issuing a cease and desist order under subsection (e) of this section, the Administrator shall serve an order to show cause upon the small business lending company, non-Federally regulated lender, or other person why an order revoking or suspending the authority or a cease and desist order should not be issued. The order to show cause shall contain a statement of the matters of fact and law asserted by the Administrator and the legal authority and jurisdiction under which a hearing is to be held, and shall set forth that a hearing will be held before an administrative law judge at a time and place stated in the order. Such hearing shall be conducted pursuant to the provisions of sections 554, 556, and 557 of title 5. If after hearing, or a waiver thereof, the Administrator determines that an order revoking or suspending the authority or a cease and desist order should be issued, the Administrator shall promptly issue such order, which shall include a statement of the findings of the Administrator and the grounds and reasons therefor and specify the effective date of the order, and shall cause the order to be served on the small business lending company, non-Federally regulated lender, or other person involved.

(2) Witnesses summoned before the Administrator shall be paid by the party at whose instance they were called the same fees and mileage that are paid witnesses in the courts of the United States.

(3) A cease and desist order, suspension or revocation issued by the Administrator, after the hearing under this subsection is final agency action for purposes of chapter 7 of title 5. An adversely aggrieved party shall have 20 days from the date of issuance of the cease and desist order, suspension or revocation, to seek judicial review in an appropriate district court.

**(g) Removal or suspension of management official**

**(1) Definition**

In this section, the term ''management official'' means, with respect to a small business lending company or a non-Federally regulated lender, an officer, director, general partner, manager, employee, agent, or other participant in the management of the affairs of the company's or lender's activities under section 636(a) of this title.

**(2) Removal of management official**

**(A) Notice**

The Administrator may serve upon any management official a written notice of its intention to remove that management official if, in the opinion of the Administrator, the management official—

(i) willfully and knowingly commits a substantial violation of—

(I) this chapter;

(II) any regulation issued under this chapter;

(III) a final cease-and-desist order under this chapter; or

(IV) any agreement by the management official, the small business lending company or non-Federally regulated lender under this chapter; or

(ii) willfully and knowingly commits a substantial breach of a fiduciary duty of that person as a management official and the violation or breach of fiduciary duty is one involving personal dishonesty on the part of such management official.

**(B) Contents of notice**

A notice under subparagraph (A) shall contain a statement of the facts constituting grounds therefor and shall fix a time and place at which a hearing, conducted pursuant to sections 554, 556, and 557 of title 5, will be held thereon.

**(C) Hearing**

**(i) Timing**

A hearing under subparagraph (B) shall be held not earlier than 30 days and later than 60 days after the date of service of notice of the hearing, unless an earlier or a later date is set by the Administrator at the request of—

(I) the management official, and for good cause shown; or

(II) the Attorney General.

**(ii) Consent**

Unless the management official appears at a hearing under this paragraph in person or by a duly authorized representative, the management official shall be deemed to have consented to the issuance of an order of removal under subparagraph (A).

**(D) Order of removal**

**(i) In general**

In the event of consent under subparagraph (C)(ii), or if upon the record made at a hearing under this subsection, the Administrator finds that any of the grounds specified in the notice of removal has been established, the Administrator may issue such orders of removal from office as the Administrator deems appropriate.

**(ii) Effectiveness**

An order under clause (i) shall—

(I) take effect 30 days after the date of service upon the subject small business

lending company or non-Federally regulated lender and the management official concerned (except in the case of an order issued upon consent as described in subparagraph (C)(ii), which shall become effective at the time specified in such order); and

(II) remain effective and enforceable, except to such extent as it is stayed, modified, terminated, or set aside by action of the Administrator or a reviewing court in accordance with this section.

**(3) Authority to suspend or prohibit participation**

**(A) In general**

In order to protect a small business lending company, a non-Federally regulated lender or the interests of the Administration or the United States, the Administrator may suspend from office or prohibit from further participation in any manner in the management or conduct of the affairs of a small business lending company or a non-Federally regulated lender a management official by written notice to such effect served upon the management official. Such suspension or prohibition may prohibit the management official from making, servicing, reviewing, approving, or liquidating any loan under section 636(a) of this title.

**(B) Effectiveness**

A suspension or prohibition under subparagraph (A)—

(i) shall take effect upon service of notice under paragraph (2); and

(ii) unless stayed by a court in proceedings authorized by subparagraph (C), shall remain in effect—

(I) pending the completion of the administrative proceedings pursuant to a notice of intention to remove served under paragraph (2); and

(II) until such time as the Administrator dismisses the charges specified in the notice, or, if an order of removal or prohibition is issued against the management official, until the effective date of any such order.

**(C) Judicial review of suspension prior to hearing**

Not later than 10 days after a management official is suspended or prohibited from participation under subparagraph (A), the management official may apply to an appropriate district court for a stay of the suspension or prohibition pending the completion of the administrative proceedings pursuant to a notice of intent to remove served upon the management official under paragraph (2).

**(4) Authority to suspend on criminal charges**

**(A) In general**

If a management official is charged in any information, indictment, or complaint authorized by a United States attorney, with a felony involving dishonesty or breach of trust, the Administrator may, by written notice served upon the management official, suspend the management official from office or prohibit the management official from further participation in any manner in the management or conduct of the affairs of the small business lending company or non-Federally regulated lender.

**(B) Effectiveness**

A suspension or prohibition under subparagraph (A) shall remain in effect until the information, indictment, or complaint is finally disposed of, or until terminated by the Administrator or upon an order of a district court.

**(C) Authority upon conviction**

If a judgment of conviction with respect to an offense described in subparagraph (A) is entered against a management official, then at such time as the judgment is not subject to further judicial review (and for purposes of this subparagraph shall not include any petition for a writ of habeas corpus), the Administrator may issue and serve upon the management official an order removing the management official, effective upon service of a copy of the order upon the small business lending company or non-Federally regulated lender.

**(D) Authority upon dismissal or other disposition**

A finding of not guilty or other disposition of charges described in subparagraph (A) shall not preclude the Administrator from instituting proceedings under subsection (e) or (f) of this section.

**(5) Notification to small business lending company or a non-Federally regulated lender**

Copies of each notice required to be served on a management official under this section shall also be served upon the small business lending company or non-Federally regulated lender involved.

**(6) Final agency action and judicial review**

**(A) Issuance of orders**

After a hearing under this subsection, and not later than 30 days after the Administrator notifies the parties that the case has been submitted for final decision, the Administrator shall render a decision in the matter (which shall include findings of fact upon which its decision is predicated), and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with this section. The decision of the Administrator shall constitute final agency action for purposes of chapter 7 of title 5.

**(B) Judicial review**

An adversely aggrieved party shall have 20 days from the date of issuance of the order to seek judicial review in an appropriate district court.

**(h) Appointment of receiver**

(1) In any proceeding under subsection (f)(4) of this section or subsection (g)(6)(C) of this section, the court may take exclusive jurisdiction of a small business lending company or a non-

Federally regulated lender and appoint a receiver to hold and administer the assets of the company or lender.

(2) Upon request of the Administrator, the court may appoint the Administrator as a receiver under paragraph (1).

**(i) Possession of assets**

(1) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent, the Administrator may take possession of the portfolio of loans guaranteed by the Administrator and sell such loans to a third party by means of a receiver appointed under subsection (h) of this section.

(2) If a small business lending company or a non-Federally regulated lender is not in compliance with capital requirements or is insolvent or otherwise operating in an unsafe and unsound condition, the Administrator may take possession of servicing activities of loans that are guaranteed by the Administrator and sell such servicing rights to a third party by means of a receiver appointed under subsection (h) of this section.

**(j) Penalties and forfeitures**

(1) Except as provided in paragraph (2), a small business lending company or a non-Federally regulated lender which violates any regulation or written directive issued by the Administrator regarding the filing of any regular or special report shall pay to the United States a civil penalty of not more than $5,000 for each day of the continuance of the failure to file such report, unless it is shown that such failure is due to reasonable cause and not due to willful neglect. The civil penalties under this subsection may be enforced in a civil action brought by the Administrator. The penalties under this subsection shall not apply to any affiliate of a small business lending company that procures at least 10 percent of its annual purchasing requirements from small manufacturers.

(2) The Administrator may by rules and regulations that shall be codified in the Code of Federal Regulations, after an opportunity for notice and comment, or upon application of an interested party, at any time previous to such failure, by order, after notice and opportunity for hearing which shall be conducted pursuant to sections 554, 556, and 557 of title 5, exempt in whole or in part, any small business lending company or non-Federally regulated lender from paragraph (1), upon such terms and conditions and for such period of time as it deems necessary and appropriate, if the Administrator finds that such action is not inconsistent with the public interest or the protection of the Administration. The Administrator may for the purposes of this section make any alternative requirements appropriate to the situation.

(Pub. L. 85–536, § 2[23], as added Pub. L. 98–473, title I, § 111A(a), Oct. 12, 1984, 98 Stat. 1965; Pub. L. 108–447, div. K, title I, § 161, Dec. 8, 2004, 118 Stat. 3458.)

PRIOR PROVISIONS

A prior section 650, acts July 30, 1953, ch. 282, title II, § 221, 67 Stat. 240; June 30, 1955, ch. 251, § 4, 69 Stat. 225; Aug. 9, 1955, ch. 628, § 13, 69 Stat. 551; Pub. L. 85–120, § 2, Aug. 3, 1957, 71 Stat. 341, provided for a termination date of the Small Business Act of 1953, and was omitted from the general revision by Pub. L. 85–536. See Codification note set out under section 631 of this title.

AMENDMENTS

2004—Pub. L. 108–447 amended section catchline and text generally. Prior to amendment, text related to disaster loan assistance to small business concerns in the fishing industry due to El Nino-related ocean conditions.

## § 651. National small business tree planting program

**(a) Authorization of grants and contracts with States**

The Administrator is authorized to make grants to or to enter into contracts with any State for the purpose of contracting with small businesses to plant trees on land owned or controlled by such State or local government. The Administrator shall require as a condition of any grant (or amendment or modification thereof) under this section that the applicant also contribute to the project a sum equal to at least 25 per centum of a particular project cost from sources other than the Federal Government. Such non-Federal money may include inkind contributions, including the cost or value of providing care and maintenance for a period of three years after the planting of the trees, but shall not include any value attributable to the land on which the trees are to be planted, nor may any part of any grant be used to pay for land or land charges: *Provided*, That not less than one-half of the amounts appropriated under this section shall be allocated to each State, the District of Columbia, and the Commonwealth of Puerto Rico on the basis of the population in each area as compared to the total population in all areas as provided by the Census Bureau of the Department of Commerce in the annual population estimate or the decennial census, whichever is most current. The Administrator may give a priority in awarding the remaining one-half of appropriated amounts to applicants who agree to contribute more than the requisite 25 per centum, and shall give priority to a proposal to restore an area determined to be a major disaster by the President on a date not more than three years prior to the fiscal year for which the application is made.

**(b) Establishment by Administrator**

In order to accomplish the objectives of this section, the Administrator, in consultation with appropriate Federal agencies, shall be responsible for formulating a national small business tree planting program. Based on this program, a State may submit a detailed proposal for tree planting by contract.

**(c) Utilization of small business concerns in implementing program**

To encourage and develop the capacity of small business concerns, to utilize this important segment of our economy, and to permit rapid increases in employment opportunities in local communities, grantees are directed to utilize small business contractors or concerns in connection with the program established by this

section, and shall, to the extent practicable, divide the project to allow more than one small business concern to perform the work under the project.

**(d) Cooperation of Federal agencies; technical services**

For purposes of this section, agencies of the Federal Government are hereby authorized to cooperate with all grantees and with State foresters or other appropriate officials by providing without charge, in furtherance of this program, technical services with respect to the planting and growing of such trees.

**(e) Authorization of appropriations**

There are authorized to be appropriated to carry out the objectives of this section, $15,000,000 for fiscal year 1991 and $30,000,000 for each of the fiscal years 1995 through 1997, and all of such sums may remain available until expended.

**(f) Rules and regulations**

Notwithstanding any other law, rule, or regulation, the administration shall publish in the Federal Register proposed rules and regulations implementing this section within sixty days after November 5, 1990, and shall publish final rules and regulations within one hundred and twenty days of November 5, 1990.

**(g) Definitions**

As used in this section:

(1) the term ''local government'' includes political subdivisions of a State such as counties, parishes, cities, towns and municipalities;

(2) the term ''planting'' includes watering, application of fertilizer and herbicides, pruning and shaping, and other subsequent care and maintenance for a period of three years after the trees are planted; and

(3) the term ''State'' includes any agency thereof.

**(h) Annual report to President and Congress**

The Administrator shall submit annually to the President and the Congress a report on activities within the scope of this section.

(Pub. L. 85–536, § 2[24], as added Pub. L. 101–515, title V, § 4, Nov. 5, 1990, 104 Stat. 2140; amended Pub. L. 103–211, title I, § 201, Feb. 12, 1994, 108 Stat. 5; Pub. L. 103–317, title IV, Aug. 26, 1994, 108 Stat. 1755.)

PRIOR PROVISIONS

A prior section 651, act July 30, 1953, ch. 282, § 225, as added Aug. 9, 1955, ch. 628, § 14, 69 Stat. 551, prohibited duplication of activities, and was omitted as superseded by section 647 of this title. See Codification note set out under section 631 of this title.

AMENDMENTS

1994—Subsec. (a). Pub. L. 103–211 inserted at end '', and shall give priority to a proposal to restore an area determined to be a major disaster by the President on a date not more than three years prior to the fiscal year for which the application is made''.

Subsec. (e). Pub. L. 103–317 substituted ''fiscal years 1995 through 1997'' for ''fiscal years 1992 through 1994''.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (h) of this section relating to submitting annual report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 191 of House Document No. 103–7.

## § 652. Central European Enterprise Development Commission

**(a) Establishment**

There is hereby established a Central European Small Business Enterprise Development Commission (hereinafter in this section referred to as the ''Commission''). The Commission shall be comprised of a representative of each of the following: the Small Business Administration, the Association of American Universities, and the Association of Small Business Development Centers.

**(b) Management and technical assistance to designated Central European countries**

The Commission shall develop in Czechoslovakia, Poland and Hungary (hereinafter referred to as ''designated Central European countries'') a self-sustaining system to provide management and technical assistance to small business owners.

(1) Not later than 90 days after November 5, 1990, the Commission, in consultation with the Agency for International Development, shall enter[1] a contract with one or more entities to—

(A) determine the needs of small businesses in the designated Central European countries for management and technical assistance;

(B) evaluate appropriate Small Business Development Center-programs which might be replicated in order to meet the needs of each of such countries; and

(C) identify and assess the capability of educational institutions in each such country to develop a Small Business Development Center type program.

(2) Not later than 18 months after November 5, 1990, the Commission shall review the recommendations submitted to it and shall formulate and contract for the establishment of a three-year management and technical assistance demonstration program.

**(c) Eligibility**

In order to be eligible to participate, the educational institution in each designated Central European country shall—

(1) obtain the prior approval of the government to conduct the program;

(2) agree to provide partial financial support for the program, either directly or indirectly, during the second and third years of the demonstration program; and

(3) agree to obtain private sector involvement in the delivery of assistance under the program.

**(d) Initial meeting and organization**

The Commission shall meet and organize not later than 30 days after November 5, 1990.

**(e) Reimbursement for necessary expenses**

Members of the Commission shall serve without pay, except they shall be entitled to reim-

[1] So in original. Probably should be ''enter into''.

bursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their functions in the same manner as persons employed intermittently in the Federal Government are allowed expenses under section 5703 of title 5.

**(f) Meetings; quorum**

Two Commissioners shall constitute a quorum for the transaction of business. Meetings shall be at the call of the Chairperson who shall be elected by the Members of the Commission.

**(g) Authority; personnel**

The Commission shall not have any authority to appoint staff, but upon request of the Chairperson, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of such department or agency to the Commission to assist in carrying out the Commission's functions under this section without regard to section 3341 of title 5. The Administrator of the General Services Administration shall provide, on a reimbursable basis, such administrative support services as the Commission may request.

**(h) Initial and annual reports to Congress**

The Commission shall report to Congress not later than December 1, 1991, and annually thereafter, on the progress in carrying out the provisions of this section.

**(i) Authorization of appropriations**

There are hereby authorized to be appropriated to the Small Business Administration the sum of $3,000,000 for fiscal year 1991, $5,000,000 for fiscal year 1992, $2,000,000 for each of fiscal years 1993 and 1994, and $1,000,000 for fiscal year 1995 to carry out the provisions of this section. Such sums shall be disbursed by the Small Business Administration as requested by the Commission and may remain available until expended. Any authority to enter contracts or other spending authority provided for in this section is subject to amounts provided for in advance in appropriations Acts.

(Pub. L. 85–536, § 2[25], as added Pub. L. 101–515, title V, § 7, Nov. 5, 1990, 104 Stat. 2142; amended Pub. L. 103–81, § 9(b), Aug. 13, 1993, 107 Stat. 783; Pub. L. 103–403, title IV, § 405, Oct. 22, 1994, 108 Stat. 4192.)

AMENDMENTS

1994—Pub. L. 103–403 substituted '', $2,000,000 for each of fiscal years 1993 and 1994, and $1,000,000 for fiscal year 1995'' for ''and $2,000,000 for each of fiscal years 1993 and 1994''.

1993—Subsec. (i). Pub. L. 103–81 substituted ''$2,000,000 for each of fiscal years 1993 and 1994'' for ''$8,000,000 for fiscal year 1993''.

## § 653. Office of Rural Affairs

**(a) Establishment**

There is hereby established in the Small Business Administration an Office of Rural Affairs (hereafter in this section referred to as the ''Office'').

**(b) Appointment of director**

The Office shall be headed by a director who shall be appointed by the Administrator not later than 90 days after November 15, 1990.

**(c) 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 departments and 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 which improve the economic opportunities of rural citizens; and

(5) work with the United States Tourism and Travel Administration to assist small businesses in rural areas with tourism promotion and development.

(Pub. L. 85–536, § 2[26], as added Pub. L. 101–574, title III, § 302, Nov. 15, 1990, 104 Stat. 2827.)

CATALOG OF PROGRAMS TO ASSIST RURAL SMALL BUSINESS CONCERNS

Section 304 of Pub. L. 101–574 provided that:

''(a) COMPILATION.—Not later than 180 days after the date of the enactment of this title [Nov. 15, 1990], the Small Business Administration shall compile a catalog of programs administered by Federal and State departments and agencies which offer assistance to small business concerns in rural areas. Such catalog shall include a description of each such program and the name, address, and telephone number of the respective Federal and State officials responsible for administering the program.

''(b) DISTRIBUTION.—Copies of the catalog compiled pursuant to subsection (a) shall be transmitted to the Congress and copies shall be made available to small business concerns in rural areas, appropriate trade associations, Federal and State agencies for the assistance of small business concerns, State and local chambers of commerce, other appropriate nonprofit organizations, and the general public.

''(c) BIANNUAL UPDATE.—The Small Business Administration shall issue updates of the catalog compiled pursuant to subsection (a) by February 1, 1993, and February 1, 1995.''

RURAL SMALL BUSINESS CONFERENCES

Section 306 of Pub. L. 101–574 provided that:

''(a) IN GENERAL.—The Chief Counsel for Advocacy of the Small Business Administration shall, as soon as practicable after the catalog (described in section 305 [probably means section 304, set out above] and hereinafter referred to as the 'catalog') is issued, but not later than 90 days after the date such catalog is issued, convene regional rural conferences in 5 cities or towns in the United States.

''(b) PREPARATIONS.—Prior to the conferences, the Office of Advocacy shall—

''(1) select the sites for the conferences in order to encourage the maximum participation of all interested parties including private citizens and representatives of business, government, educational and nonprofit institutions; and

''(2) distribute the catalog of programs and such other background materials prepared by the Office of Advocacy as the Chief Counsel deems appropriate.

''(c) PURPOSES OF THE CONFERENCES.—The conference shall—

''(1) review the effectiveness of current Federal programs to promote rural small business and its needs, with particular reference to the catalog of such programs;

''(2) review how current Federal programs could be made more accessible to small businesses located in rural areas;

''(3) make recommendations on how current programs can be approved to better address small business needs in rural areas;

''(4) review the availability and cost of capital, transportation, and telecommunications in rural areas;

''(5) review the availability of technical assistance and training programs for small business needs in rural areas, including marketing, computer training, accounting, financing, and international trade; and

''(6) determine any additional needs of small businesses in rural areas.

''(d) REPORT.—The Chief Counsel for Advocacy shall prepare a summary of the findings and recommendations of each regional conference. Not later than 60 days after the last of the 5 regional conferences have been held, the Chief Counsel for Advocacy shall transmit such summaries to the Congress and the President, along with conclusions and recommendations, including specific legislative proposals and recommendations for administrative or other actions. The transmittal of the required information shall be deemed a report of the Chief Counsel for Advocacy under the terms and conditions of section 206 of Public Law 94–305 [15 U.S.C. 634f]. To the extent practicable, the report shall estimate the cost of implementing each recommendation of a regional conference as well as those of the Chief Counsel.''

RURAL TOURISM TRAINING PROGRAM

Section 311 of Pub. L. 101–574 provided that: ''The Chief Counsel for Advocacy of the Small Business Administration shall conduct training sessions on the types of Federal assistance available for the development of rural small businesses engaged in tourism and tourism-related activities. Such training sessions shall be conducted in conjunction with the Office of Rural Affairs (established pursuant to section 26 of the Small Business Act [15 U.S.C. 653]) and appropriate personnel designated by each district office of the Administration.''

## § 654. 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 expectations for workplace behavior, prohibitions against reporting to work or working under the influence of illegal drugs or alcohol, prohibitions against the use or possession of illegal drugs in the workplace, and the consequences of violating those expectations and prohibitions;

(B) drug and alcohol abuse prevention training for a total of not less than 2 hours for each employee, and additional voluntary drug and alcohol abuse prevention training for employees who are parents;

(C) employee illegal drug testing, 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 a review of each positive test result by a medical review officer;

(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 any—

(A) applicant for employment;

(B) employee;

(C) supervisor;

(D) manager;

(E) officer of a small business concern who is active in management of the concern; and

(F) owner of a small business concern who is active in management of the concern.

#### (4) Medical review officer

The term ''medical review officer''—

(A) means a licensed physician with knowledge of substance abuse disorders; and

(B) does not include any—

(i) employee of the small business concern; or

(ii) employee or agent of, or any person having a financial interest in, the laboratory for which the illegal drug test results are being reviewed.

### (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**

Each 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) of this section regarding the most effective practices in establishing and carrying out drug-free workplace programs.

**(2) Evaluation of program**

**(A) Data collection and analysis**

Each 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. Such system shall conform to such requirements as the Administrator, after consultation with the Director of the Center for Substance Abuse and Prevention, may prescribe. Not more than 5 percent of the amount of each grant made under subsection (b) of this section shall be used by the eligible intermediary to carry out this paragraph.

**(B) Method of evaluation**

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) of this section 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). Such assistance shall include the identification of additional information suitable for measuring the benefits of drug-free workplace programs to the small business concern and to the concern's employees and the identification of methods suitable for analyzing such information.

**(d) Evaluation and coordination**

Not later than 18 months after October 21, 1998, the Administrator, in coordination with the Secretary of Labor, the Secretary of Health and Human Services, and the Director of National Drug Control Policy, shall—

(1) evaluate the drug-free workplace programs established with assistance made available under this section; and

(2) submit to Congress a report describing the results of the evaluation under paragraph (1).

**(e) 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.

**(f) Construction**

Nothing in this section may be construed to require an employer who attends a program offered by an intermediary to contract for any service offered by the intermediary.

**(g) Authorization**

**(1) In general**

There is authorized to be appropriated to carry out this section (other than subsection (b)(2)), $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 648(c)(3)(T) of this title.

**(3) Additional authorization for technical assistance grants**

There are authorized to be appropriated to carry out subsection (b)(2) of this section, $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).

(Pub. L. 85–536, § 2[27], as added Pub. L. 101–574, title III, § 310, Nov. 15, 1990, 104 Stat. 2831; amended Pub. L. 105–277, div. C, title IX, § 904, Oct. 21, 1998, 112 Stat. 2681–708; Pub. L. 106–554, § 1(a)(9) [title V, § 503(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695; Pub. L. 108–447, div. K, title I, §§ 123–126, Dec. 8, 2004, 118 Stat. 3449–3451.)

REFERENCES IN TEXT

The National Narcotics Leadership Act of 1988, referred to in subsec. (a)(2)(D)(ii), is subtitle A of title I of Pub. L. 100–690, Nov. 18, 1988, 102 Stat. 4181, as amended. Chapter 2 of the Act is classified generally to subchapter II (§ 1521 et seq.) of chapter 20 of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under former section 1501 of Title 21 and Tables.

AMENDMENTS

2004—Subsec. (a)(2)(D). Pub. L. 108–447, § 125, amended subpar. (D) generally. Prior to amendment, subpar. (D) read as follows: "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.''

Subsec. (b). Pub. L. 108–447, § 124, designated existing provisions as par. (1), inserted heading, and added pars. (2) and (3).

Subsec. (c). Pub. L. 108–447, § 126, amended heading and text of subsec. (c) generally. Prior to amendment, text read as follows: ''Each drug-free workplace program established with assistance made available under this section shall—

''(1) include, as reasonably necessary and appropriate, practices and procedures to ensure the confidentiality of illegal drug test results and of any participation by an employee in a rehabilitation program;

''(2) prohibit the mandatory disclosure of medical information by an employee prior to a confirmed positive illegal drug test; and

''(3) require that a medical review officer reviewing illegal drug test results shall report only the final results, limited to those drugs for which the employee tests positive, in writing and in a manner designed to ensure the confidentiality of the results.''

Subsec. (g)(1). Pub. L. 108–447, § 123(a), substituted ''(other than subsection (b)(2)), $5,000,000 for each of fiscal years 2005 and 2006. Amounts made available under this paragraph'' for '', $5,000,000 for each of fiscal years 2001 through 2003. Amounts made available under this subsection''.

Subsec. (g)(2). Pub. L. 108–447, § 123(b), substituted ''paragraph (1) for each of fiscal years 2005 and 2006, not more than the greater of 10 percent or $500,000'' for ''this subsection, not more than the greater of 10 percent or $1,000,000''.

Subsec. (g)(3), (4). Pub. L. 108–447, § 123(c), (d), added pars. (3) and (4).

2000—Pub. L. 106–554, § 1(a)(9) [title V, § 503(a)(1)], substituted ''Paul D. Coverdell drug-free workplace program'' for ''Drug-free workplace demonstration program'' in section catchline.

Subsec. (g)(1). Pub. L. 106–554, § 1(a)(9) [title V, § 503(a)(2)], substituted ''$5,000,000 for each of fiscal years 2001 through 2003'' for ''$10,000,000 for fiscal years 1999 and 2000''.

1998—Pub. L. 105–277 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (c) authorizing Administration to make grants to conduct tourism demonstration programs, establishing purpose of program, placing a condition on grant recipients, authorizing appropriations, and requiring report to President and Congress.

FINDINGS AND PURPOSES OF 1998 AMENDMENT

Pub. L. 105–277, div. C, title IX, § 902, Oct. 21, 1998, 112 Stat. 2681–707, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) 74 percent of adults who use illegal drugs are employed;

''(2) small business concerns employ over 50 percent of the Nation's workforce;

''(3) in more than 88 percent of families with children under the age of 18, at least 1 parent is employed; and

''(4) employees who use and abuse addictive illegal drugs and alcohol increase costs for businesses and risk the health and safety of all employees because—

''(A) absenteeism is 66 percent higher among drug users than individuals who do not use drugs;

''(B) health benefit utilization is 300 percent higher among drug users than individuals who do not use drugs;

''(C) 47 percent of workplace accidents are drug-related;

''(D) disciplinary actions are 90 percent higher among drug users than among individuals who do not use drugs; and

''(E) employee turnover is significantly higher among drug users than among individuals who do not use drugs.

''(b) PURPOSES.—The purposes of this title [see Short Title of 1998 Amendment note set out under section 631 of this title] are to—

''(1) educate small business concerns about the advantages of a drug-free workplace;

''(2) provide grants and technical assistance in addition to financial incentives to enable small business concerns to create a drug-free workplace;

''(3) assist working parents in keeping their children drug-free; and

''(4) encourage small business employers and employees alike to participate in drug-free workplace programs.''

SENSE OF CONGRESS FOR 1998 AMENDMENT

Pub. L. 105–277, div. C, title IX, § 903, Oct. 21, 1998, 112 Stat. 2681–708, provided that: ''It is the sense of Congress that—

''(1) businesses should adopt drug-free workplace programs;

''(2) States should consider incentives to encourage businesses to adopt drug-free workplace programs; and

''(3) such incentives may include—

''(A) financial incentives, including—

''(i) a reduction in workers' compensation premiums;

''(ii) a reduction in unemployment insurance premiums; and

''(iii) tax deductions in an amount equal to the amount of expenditures for employee assistance programs, treatment, or illegal drug testing; and

''(B) other incentives, such as the adoption of liability limitations, as recommended by the President's Commission on Model State Drug Laws.''

## § 655. Pilot Technology Access Program

### (a) Establishment

The Administration, in consultation with the National Institute of Standards and Technology and the National Technical Information Service, shall establish a Pilot Technology Access Program, for making awards under this section to Small Business Development Centers (hereinafter in this section referred to as ''Centers'').

### (b) Criteria for selection of Centers

The Administrator of the Small Business Administration shall establish competitive, merit-based criteria for the selection of Centers to receive awards on the basis of—

(1) the ability of the applicant to carry out the purposes described in subsection (d) of this section in a manner relevant to the needs of industries in the area served by the Center;

(2) the ability of the applicant to integrate the implementation of this program with existing Federal and State technical and business assistance resources; and

(3) the ability of the applicant to continue providing technology access after the termination of this pilot program.

### (c) Matching requirement

To be eligible to receive an award under this section, an applicant shall provide a matching contribution at least equal to that received under such award, not more than 50 percent of which may be waived overhead or in-kind contributions.

### (d) Purpose of awards

Awards made under this section shall be for the purpose of increasing access by small businesses to on-line data base services that provide technical and business information, and access to technical experts, in a wide range of technologies, through such activities as—

(1) defraying the cost of access by small businesses to the data base services;

(2) training small businesses in the use of the data base services; and

(3) establishing a public point of access to the data base services.

Activities described in paragraphs (1) through (3) may be carried out through contract with a private entity.

**(e) Renewal of awards**

Awards previously made under section 648a[1] of this title may be renewed under this section.

**(f) Interim report**

Two years after the date on which the first award was issued under section 648a[1] of this title, the General Accounting Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science, and Transportation of the Senate, an interim report on the implementation of the program under such section and this section, including the judgments of the participating Centers as to its effect on small business productivity and innovation.

**(g) Final report**

Three years after such date, the General Accounting Office shall submit to the Committee on Small Business and the Committee on Science, Space, and Technology of the House of Representatives and to the Committee on Small Business and the Committee on Commerce, Science and Transportation of the Senate, a final report evaluating the effectiveness of the Program under section 648a[1] of this title and this section in improving small business productivity and innovation.

**(h) Authorization of appropriations**

There are authorized to be appropriated to the Small Business Administration $5 million for each of fiscal years 1992 through 1995 to carry out this section, and such amounts may remain available until expended.

**(i) Funding from other sources; employment of Centers by Federal agencies**

Centers are encouraged to seek funding from Federal and non-Federal sources other than those provided for in this section to assist small businesses in the identification of appropriate technologies to fill their needs, the transfer of technologies from Federal laboratories, public and private universities, and other public and private institutions, the analysis of commercial opportunities represented by such technologies, and such other functions as the development, business planning, market research, and financial packaging required for commercialization. Insofar as such Centers pursue these activities, Federal agencies are encouraged to employ these Centers to interface with small businesses for such purposes as facilitating small business participation in Federal procurement and fostering commercialization of Federally-funded research and development.

[1] See References in Text note below.

(Pub. L. 85–536, § 2[28], as added Pub. L. 102–140, title VI, § 609(d), Oct. 28, 1991, 105 Stat. 825.)

REFERENCES IN TEXT

Section 648a of this title, referred to in subsecs. (e) to (g), was repealed by Pub. L. 102–140, title VI, § 609(e), Oct. 28, 1991, 105 Stat. 826, effective Oct. 1, 1992.

CHANGE OF NAME

General Accounting Office redesignated Government Accountability Office by section 8 of Pub. L. 108–271, set out as a note under section 702 of Title 31, Money and Finance.

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress.

## § 656. Women's business center program

**(a) Definitions**

In this section—

(1) the term ''Assistant Administrator'' means the Assistant Administrator of the Office of Women's Business Ownership established under subsection (g) of this section;

(2) the term ''private nonprofit organization'' means an entity that is described in section 501(c) of title 26 and exempt from taxation under section 501(a) of such title;

(3) the term ''small business concern owned and controlled by women'', either startup or existing, includes any small business concern—

(A) that is not less than 51 percent owned by 1 or more women; and

(B) the management and daily business operations of which are controlled by 1 or more women; and

(4) the term ''women's business center site'' means the location of—

(A) a women's business center; or

(B) 1 or more women's business centers, established in conjunction with another women's business center in another location within a State or region—

(i) that reach a distinct population that would otherwise not be served;

(ii) whose services are targeted to women; and

(iii) whose scope, function, and activities are similar to those of the primary women's business center or centers in conjunction with which it was established.

**(b) Authority**

The Administration may provide financial assistance to private nonprofit organizations to conduct 5-year projects for the benefit of small business concerns owned and controlled by women. The projects shall provide—

(1) financial assistance, including training and counseling in how to apply for and secure business credit and investment capital, preparing and presenting financial statements, and 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 identifying and segmenting domestic and international market opportunities, preparing and executing marketing plans, developing pricing strategies, locating contract opportunities, negotiating contracts, and utilizing varying public relations and advertising techniques.

**(c) Conditions of participation**

**(1) Non-Federal contributions**

As a condition of receiving financial assistance authorized by this section, the 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:

(A) in the first and second years, 1 non-Federal dollar for each 2 Federal dollars; and

(B) in the third, fourth, and fifth years, 1 non-Federal dollar for each Federal dollar.

**(2) 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.

**(3) Form of Federal contributions**

The financial assistance authorized pursuant to this section may be made by grant, contract, or cooperative agreement and may contain such provision, as necessary, to provide for payments in lump sum or installments, and in advance or by way of reimbursement. The Administration 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.

**(4) Failure to obtain non-Federal funding**

If any recipient of assistance fails to obtain the required non-Federal contribution during any project, it shall not be eligible thereafter for advance disbursements pursuant to paragraph (3) during the remainder of that project, or for any other project for which it is or may be funded by the Administration, and prior to approving assistance to such organization for any other projects, the Administration shall specifically determine whether the Administration believes that the recipient will be able to obtain the requisite non-Federal funding and enter a written finding setting forth the reasons for making such determination.

**(d) Contract authority**

A women's business center may enter into a contract with a Federal department or agency to provide specific assistance to women and other underserved small business concerns. Performance of such contract should not hinder the women's business centers in carrying out the terms of the grant received by the women's business centers from the Administration.

**(e) Submission of 5-year plan**

Each applicant organization initially shall submit a 5-year plan to the Administration on proposed fundraising and training activities, and a recipient organization may receive financial assistance under this program for a maximum of 5 years per women's business center site.

**(f) Criteria**

The Administration shall evaluate and rank applicants in accordance with predetermined selection criteria that shall be stated in terms of relative importance. Such criteria and their relative importance shall be made publicly available and stated in each solicitation for applications made by the Administration. 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.

**(g) Office of Women's Business Ownership**

**(1) Establishment**

There is established within the Administration an Office of Women's Business Ownership, which shall be responsible for the administration of the Administration's programs for the development of women's business enterprises (as defined in section 7108 of this title). The Office of Women's Business Ownership shall be administered by an Assistant Administrator, who shall be appointed by the Administrator.

**(2) Assistant Administrator of the Office of Women's Business Ownership**

**(A) 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).

**(B) Responsibilities and duties**

**(i) Responsibilities**

The responsibilities of the Assistant Administrator shall be to administer the programs and services of the Office of Women's Business Ownership established to assist women entrepreneurs in the areas of—

(I) starting and operating a small business;

(II) development of management and technical skills;

(III) seeking Federal procurement opportunities; and

(IV) increasing the opportunity for access to capital.

**(ii) Duties**

The Assistant Administrator shall—

(I) administer and manage the Women's Business Center program;

(II) recommend the annual administrative and program budgets for the Office

of Women's Business Ownership (including the budget for the Women's Business Center program);

(III) establish appropriate funding levels therefore[1];

(IV) review the annual budgets submitted by each applicant for the Women's Business Center program;

(V) select applicants to participate in the program under this section;

(VI) implement this section;

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

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

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

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

**(C) Consultation requirements**

In carrying out the responsibilities and duties described in this paragraph, the Assistant Administrator shall confer with and seek the advice of the Administration officials in areas served by the women's business centers.

**(h) Program examination**

**(1) In general**

The Administration shall—

(A) develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section, pursuant to which each such center shall provide to the Administration—

(i) an itemized cost breakdown of actual expenditures for costs incurred during the preceding year; and

(ii) documentation regarding the amount of matching assistance from non-Federal sources obtained and expended by the center during the preceding year in order to meet the requirements of subsection (c) of this section and, with respect to any in-kind contributions described in subsection (c)(2) of this section that were used to satisfy the requirements of subsection (c) of this section, verification of the existence and valuation of those contributions; and

(B) 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.

**(2) Conditions for continued funding**

In determining whether to award a contract (as a sustainability grant) under subsection (*l*) of this section or to renew a contract (either as a grant or cooperative agreement) under this section with a women's business center, the Administration—

(A) shall consider the results of the most recent examination of the center under paragraph (1); and

(B) may withhold such award or renewal, if the Administration determines that—

(i) the center has failed to provide any information required to be provided under clause (i) or (ii) of paragraph (1)(A), or the information provided by the center is inadequate; or

(ii) the center has failed to provide any information required to be provided by the center for purposes of the report of the Administration under subsection (j) of this section, or the information provided by the center is inadequate.

**(i) Contract authority**

The authority of the Administrator to enter into contracts shall be in effect for each fiscal year only to the extent and in the amounts as are provided in advance in appropriations Acts. After the Administrator has entered into a contract, either as a grant or a cooperative agreement, with any applicant under this section, it shall not suspend, terminate, or fail to renew or extend any such contract unless the Administrator provides the applicant with written notification setting forth the reasons therefore[1] and affords the applicant an opportunity for a hearing, appeal, or other administrative proceeding under chapter 5 of title 5.

**(j) Management report**

**(1) In general**

The Administration shall prepare and submit to the Committees on Small Business of the House of Representatives and the Senate a report on the effectiveness of all projects conducted under this section.

**(2) Contents**

Each report submitted under paragraph (1) shall include information concerning, with respect to each women's business center established pursuant to this section—

(A) the number of individuals receiving assistance;

(B) the number of startup business concerns formed;

(C) the gross receipts of assisted concerns;

(D) the employment increases or decreases of assisted concerns;

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

(F) the most recent analysis, as required under subsection (h)(1)(B) of this section, and the subsequent determination made by the Administration under that subsection.

**(k) Authorization of appropriations**

**(1) In general**

There is authorized to be appropriated, to remain available until the expiration of the pilot program under subsection (*l*) of this section—

(A) $12,000,000 for fiscal year 2000;

(B) $12,800,000 for fiscal year 2001;

(C) $13,700,000 for fiscal year 2002; and

(D) $14,500,000 for fiscal year 2003.

**(2) Use of amounts**

**(A) In general**

Except as provided in subparagraph (B), amounts made available under this sub-

[1] So in original. Probably should be ''therefor''.

section for fiscal year 1999, and each fiscal year thereafter, may only be used for grant awards and may not be used for costs incurred by the Administration in connection with the management and administration of the program under this section.

**(B) Exceptions**

Of the amount made available under this subsection for a fiscal year, the following amounts shall be available for selection panel costs, post-award conference costs, and costs related to monitoring and oversight:

(i) For fiscal year 2000, 2 percent.
(ii) For fiscal year 2001, 1.9 percent.
(iii) For fiscal year 2002, 1.9 percent.
(iv) For fiscal year 2003, 1.6 percent.

**(3) 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 section, except that the Administrator shall ensure that all small business sources are provided a reasonable opportunity to submit proposals.

**(4) Reservation of funds for sustainability pilot program**

**(A) In general**

Subject to subparagraph (B), of the total amount made available under this subsection for a fiscal year, the following amounts shall be reserved for sustainability grants under subsection (*l*) of this section:

(i) For fiscal year 2000, 17 percent.
(ii) For fiscal year 2001, 18.8 percent.
(iii) For fiscal year 2002, 30.2 percent.
(iv) For fiscal year 2003, 30.2 percent.

**(B) Use of unawarded funds for sustainability pilot program grants**

If the amount reserved under subparagraph (A) for any fiscal year is not fully awarded to private nonprofit organizations described in subsection (*l*)(1)(B) of this section, the Administration is authorized to use the unawarded amount to fund additional women's business center sites or to increase funding of existing women's business center sites under subsection (b) of this section.

**(*l*) Sustainability pilot program**

**(1) In general**

There is established a 4-year pilot program under which the Administration is authorized to award grants (referred to in this section as ''sustainability grants'') on a competitive basis for an additional 5-year project under this section to any private nonprofit organization (or a division thereof)—

(A) that has received financial assistance under this section pursuant to a grant, contract, or cooperative agreement; and

(B) that—

(i) is in the final year of a 5-year project; or

(ii) has completed a project financed under this section (or any predecessor to this section) and continues to provide assistance to women entrepreneurs.

**(2) Conditions for participation**

In order to receive a sustainability grant, an organization described in paragraph (1) shall submit to the Administration an application, which shall include—

(A) a certification that the applicant—

(i) is a private nonprofit organization;

(ii) employs a full-time executive director or program manager to manage the center; and

(iii) as a condition of receiving a sustainability grant, agrees—

(I) to a site visit as part of the final selection process and to an annual programmatic and financial examination; and

(II) to the maximum extent practicable, to remedy any problems identified pursuant to that site visit or examination;

(B) information demonstrating that the applicant has the ability and resources to meet the needs of the market to be served by the women's business center site for which a sustainability grant is sought, including the ability to fundraise;

(C) information relating to assistance provided by the women's business center site for which a sustainability grant is sought in the area in which the site is located, including—

(i) the number of individuals assisted;

(ii) the number of hours of counseling, training, and workshops provided; and

(iii) the number of startup business concerns formed;

(D) information demonstrating the effective experience of the applicant in—

(i) conducting financial, management, and marketing assistance programs, as described in paragraphs (1), (2), and (3) of subsection (b) of this section, designed to impart or upgrade the business skills of women business owners or potential owners;

(ii) providing training and services to a representative number of women who are both socially and economically disadvantaged;

(iii) using resource partners of the Administration and other entities, such as universities;

(iv) complying with the cooperative agreement of the applicant; and

(v) the prudent management of finances and staffing, including the manner in which the performance of the applicant compared to the business plan of the applicant and the manner in which grant funds awarded under subsection (b) of this section were used by the applicant; and

(E) a 5-year plan that projects the ability of the women's business center site for which a sustainability grant is sought—

(i) to serve women business owners or potential owners in the future by improving fundraising and training activities; and

(ii) to provide training and services to a representative number of women who are

both socially and economically disadvantaged.

**(3) Review of applications**

**(A) In general**

The Administration shall—

(i) review each application submitted under paragraph (2) based on the information provided in subparagraphs (D) and (E) of that paragraph, and the criteria set forth in subsection (f) of this section;

(ii) as part of the final selection process, conduct a site visit at each women's business center for which a sustainability grant is sought; and

(iii) approve or disapprove applications for sustainability grants simultaneously with applications for grants under subsection (b) of this section.

**(B) Data collection**

Consistent with the annual report to Congress under subsection (j) of this section, each women's business center site that is awarded a sustainability grant shall, to the maximum extent practicable, collect information relating to—

(i) the number of individuals assisted;

(ii) the number of hours of counseling and training provided and workshops conducted;

(iii) the number of startup business concerns formed;

(iv) any available gross receipts of assisted concerns; and

(v) the number of jobs created, maintained, or lost at assisted concerns.

**(C) Record retention**

The Administration shall maintain a copy of each application submitted under this subsection for not less than 10 years.

**(4) Non-Federal contribution**

**(A) In general**

Notwithstanding any other provision of this section, as a condition of receiving a sustainability grant, an organization described in paragraph (1) shall agree to obtain, after its application has been approved under paragraph (3) and notice of award has been issued, cash and in-kind contributions from non-Federal sources for each year of additional program participation in an amount equal to 1 non-Federal dollar for each Federal dollar.

**(B) Form of non-Federal contributions**

Not more than 50 percent of the non-Federal assistance obtained for purposes of subparagraph (A) may be in the form of in-kind contributions that are budget line items only, including office equipment and office space.

**(5) Timing of requests for proposals**

In carrying out this subsection, the Administration shall issue requests for proposals for women's business centers applying for the pilot program under this subsection simultaneously with requests for proposals for grants under subsection (b) of this section.

(Pub. L. 85–536, § 2[29], formerly § 2[28], as added Pub. L. 102–191, § 2, Dec. 5, 1991, 105 Stat. 1589; renumbered § 2[29] and amended Pub. L. 103–403, title IV, §§ 411, 412, Oct. 22, 1994, 108 Stat. 4192, 4193; Pub. L. 105–135, title III, § 308(a), Dec. 2, 1997, 111 Stat. 2611; Pub. L. 106–17, §§ 2(a), 3, Apr. 6, 1999, 113 Stat. 27; Pub. L. 106–165, §§ 2–4(b), Dec. 9, 1999, 113 Stat. 1795–1798.)

AMENDMENTS

1999—Subsec. (a)(2) to (4). Pub. L. 106–165, § 2(1), added par. (2) and redesignated former pars. (2) and (3) as pars. (3) and (4), respectively.

Subsec. (b). Pub. L. 106–165, § 2(2), inserted ''nonprofit'' after ''private'' in introductory provisions.

Subsec. (c)(1). Pub. L. 106–17, § 2(a), inserted ''and'' after the semicolon in subpar. (A), added subpar. (B), and struck out former subpars. (B) and (C) which read as follows:

''(B) in the third and fourth years, 1 non-Federal dollar for each Federal dollar; and

''(C) in the fifth year, 2 non-Federal dollars for each Federal dollar.''

Subsec. (h). Pub. L. 106–165, § 3(1), added subsec. (h) and struck out heading and text of former subsec. (h). Text read as follows:

''(1) IN GENERAL.—Not later than 180 days after December 2, 1997, the Administrator shall develop and implement an annual programmatic and financial examination of each women's business center established pursuant to this section.

''(2) EXTENSION OF CONTRACTS.—In extending or renewing a contract with a women's business center, the Administrator shall consider the results of the examination conducted under paragraph (1).''

Subsec. (j). Pub. L. 106–165, § 3(2), added subsec. (j) and struck out heading and text of former subsec. (j). Text read as follows: ''The Administrator shall prepare and submit an annual report to the Committees on Small Business of the House of Representatives and the Senate on the effectiveness of all projects conducted under the authority of this section. Such report shall provide information concerning—

''(1) the number of individuals receiving assistance;

''(2) the number of startup business concerns formed;

''(3) the gross receipts of assisted concerns;

''(4) increases or decreases in profits of assisted concerns; and

''(5) the employment increases or decreases of assisted concerns.''

Subsec. (k)(1). Pub. L. 106–165, § 4(b)(1), added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''There is authorized to be appropriated $11,000,000 for each fiscal year to carry out the projects authorized under this section, of which, for fiscal year 1998, not more than 5 percent may be used for administrative expenses related to the program under this section.''

Pub. L. 106–17, § 3, substituted ''$11,000,000'' for ''$8,000,000''.

Subsec. (k)(2). Pub. L. 106–165, § 4(b)(2), designated existing provisions as subpar. (A), inserted heading, substituted ''Except as provided in subparagraph (B), amounts made'' for ''Amounts made'', and added subpar. (B).

Subsec. (k)(4). Pub. L. 106–165, § 4(b)(3), added par. (4).

Subsec. (*l*). Pub. L. 106–165, § 4(a), added subsec. (*l*).

1997—Pub. L. 105–135 amended section generally, substituting provisions relating to women's business center program for provisions relating to women's demonstration projects.

1994—Subsec. (g). Pub. L. 103–403, § 411(2), substituted ''1997'' for ''1995''.

Subsec. (h). Pub. L. 103–403, § 412, added subsec. (h).

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of

Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE OF 1999 AMENDMENTS

Pub. L. 106–165, § 6, Dec. 9, 1999, 113 Stat. 1801, provided that: ''This Act [amending this section and enacting provisions set out as notes under this section and section 631 of this title] and the amendments made by this Act shall take effect on October 1, 1999.''

Pub. L. 106–17, § 2(b), Apr. 6, 1999, 113 Stat. 27, provided that: ''The amendments made by this section [amending this section] shall apply beginning October 1, 1998.''

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105–135 effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as a note under section 631 of this title.

REGULATIONS

Pub. L. 106–165, § 4(c), Dec. 9, 1999, 113 Stat. 1799, provided that: ''Not later than 30 days after the date of enactment of this Act [Dec. 9, 1999], the Administrator of the Small Business Administration shall issue guidelines to implement the amendments made by this section [amending this section].''

APPLICABILITY

Section 308(b) of Pub. L. 105–135 provided that:

''(1) IN GENERAL.—Subject to paragraph (2), any organization conducting a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656) (as in effect on the day before the effective date of this Act [Dec. 2, 1997]) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, the organization shall receive financial assistance in accordance with section 29(c) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women's Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656) (as amended by this section).

''(2) TERMS OF ASSISTANCE FOR CERTAIN ORGANIZATIONS.—Any organization operating in the third year of a 3-year project under section 29 of the Small Business Act (15 U.S.C. 656) (as in effect on the day before the effective date of this Act) on September 30, 1997, may request an extension of the term of that project to a total term of 5 years. If such an extension is made, during the fourth and fifth years of the project, the organization shall receive financial assistance in accordance with section 29(c)(1)(C) of the Small Business Act (as amended by this section) subject to procedures established by the Administrator, in coordination with the Assistant Administrator of the Office of Women's Business Ownership established under section 29 of the Small Business Act (15 U.S.C. 656) (as amended by this section).''

## § 657. Oversight of regulatory enforcement

### (a) Definitions

For purposes of this section, the term—

(1) ''Board'' means a Regional Small Business Regulatory Fairness Board established under subsection (c) of this section; and

(2) ''Ombudsman'' means the Small Business and Agriculture Regulatory Enforcement Ombudsman designated under subsection (b) of this section.

### (b) SBA Enforcement Ombudsman

(1) Not later than 180 days after March 29, 1996, the Administrator shall designate a Small Business and Agriculture Regulatory Enforcement Ombudsman, who shall report directly to the Administrator, utilizing personnel of the Small Business Administration to the extent practicable. Other agencies shall assist the Ombudsman and take actions as necessary to ensure compliance with the requirements of this section. Nothing in this section is intended to replace or diminish the activities of any Ombudsman or similar office in any other agency.

(2) The Ombudsman shall—

(A) work with each agency with regulatory authority over small businesses 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 agency personnel are provided with a means to comment on the enforcement activity conducted by such personnel;

(B) establish means to receive comments from small business concerns regarding actions by agency employees conducting compliance or enforcement activities with respect to the small business concern, means to refer comments to the Inspector General of the affected agency in the appropriate circumstances, and 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.);

(C) based on substantiated comments received from small business concerns and the Boards, annually report to Congress and affected agencies evaluating the enforcement activities of agency personnel including a rating of the responsiveness to small business of the various regional and program offices of each agency;

(D) coordinate and report annually on the activities, findings and recommendations of the Boards to the Administrator and to the heads of affected agencies; and

(E) provide the affected agency with an opportunity to comment on draft reports prepared under subparagraph (C), and include a section of the final report in which the affected agency may make such comments as are not addressed by the Ombudsman in revisions to the draft.

### (c) Regional Small Business Regulatory Fairness Boards

(1) Not later than 180 days after March 29, 1996, the Administrator shall establish a Small Business Regulatory Fairness Board in each regional office of the Small Business Administration.

(2) Each Board established under paragraph (1) shall—

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

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

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

(3) Each Board shall consist of five 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 Committees on Small Business of the House of Representatives and the Senate. Not more than three of the Board members shall be of the same political party. No member shall be an officer or employee of the Federal Government, in either the executive branch or the Congress.

(4) Members of the Board shall serve at the pleasure of the Administrator for terms of three years or less.

(5) The Administrator shall select a chair from among the members of the Board who shall serve at the pleasure of the Administrator for not more than 1 year as chair.

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

**(d) Powers of Boards**

(1) The Board may hold such hearings and collect such information as appropriate for carrying out this section.

(2) The Board may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(3) The Board may accept donations of services necessary to conduct its business, provided that the donations and their sources are disclosed by the Board.

(4) Members of the Board shall serve without compensation, provided that, members of the Board 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 their homes or regular places of business in the performance of services for the Board.

(Pub. L. 85–536, § 2[30], as added Pub. L. 104–121, title II, § 222(2), Mar. 29, 1996, 110 Stat. 860.)

REFERENCES IN TEXT

Section 7 of the Inspector General Act of 1978, referred to in subsec. (b)(2)(B), is section 7 of Pub. L. 95–452, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 2[30] of Pub. L. 85–536 was renumbered section 2[37] and is set out as a note under section 631 of this title.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

EFFECTIVE DATE

Section effective on expiration of 90 days after Mar. 29, 1996, see section 224 of Pub. L. 104–121 set out in a Small Business Regulatory Fairness note under section 601 of Title 5, Government Organization and Employees.

## § 657a. HUBZone program

**(a) In general**

There is established within the Administration a program to be carried out by the Administrator to provide for Federal contracting assistance to qualified HUBZone small business concerns in accordance with this section.

**(b) Eligible contracts**

**(1) Definitions**

In this subsection—

(A) the term ''contracting officer'' has the meaning given that term in section 423(f)(5) of title 41; and

(B) the term ''full and open competition'' has the meaning given that term in section 403 of title 41.

**(2) Authority of contracting officer**

Notwithstanding any other provision of law—

(A) a contracting officer may award sole source contracts under this section to any qualified HUBZone small business concern, if—

(i) the qualified HUBZone small business concern is determined to be a responsible contractor with respect to performance of such contract opportunity, and 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;

(ii) the anticipated award price of the contract (including options) will not exceed—

(I) $5,000,000, in the case of a contract opportunity assigned a standard industrial classification code for manufacturing; or

(II) $3,000,000, in the case of all other contract opportunities; and

(iii) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price;

(B) a contract opportunity shall be awarded pursuant to this section on the basis of competition restricted to qualified HUBZone small business concerns if the contracting officer has a reasonable expectation that not less than 2 qualified HUBZone small business concerns will submit offers and that the award can be made at a fair market price; and

(C) not later than 5 days from the date the Administration is notified of a procurement officer's decision not to award a contract opportunity under this section 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 of such date the Administrator may file a written request for reconsideration of the contracting officer's decision with the Secretary of the department or agency head.

**(3) Price evaluation preference in full and open competitions**

**(A) In general**

Subject to subparagraph (B), in any 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 busi-

ness concern shall be deemed as being 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) Procurement of commodities**

For purchases by the Secretary of Agriculture of agricultural commodities, the price evaluation preference shall be—

(i) 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 commodity in a single invitation;

(ii) 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 commodity in a single invitation; and

(iii) zero, for the portion of a contract to be awarded that is greater than 40 percent of the total volume being procured for each commodity in a single invitation.

**(C) Procurement of commodities for international food aid export operations**

The price evaluation preference for purchases of agricultural commodities by the Secretary of Agriculture for export operations through international food aid programs 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 commodity being procured in a single invitation.

**(D) Treatment of preference**

A contract awarded to a HUBZone small business concern under a preference described in subparagraph (B) shall not be counted toward the fulfillment of any requirement partially set aside for competition restricted to small business concerns.

**(4) Relationship to other contracting preferences**

A procurement may not be made from a source on the basis of a preference provided in paragraph (2) or (3), if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18 or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

**(c) Enforcement; penalties**

**(1) Verification of eligibility**

In carrying out this section, the Administrator shall establish procedures relating to—

(A) the filing, investigation, and disposition by the Administration of any challenge to the eligibility of a small business concern to receive assistance under this section (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 under section 632(p)(5) of this title); and

(B) verification by the Administrator of the accuracy of any certification made or information provided to the Administration by a small business concern under section 632(p)(5) of this title.

**(2) Examinations**

The procedures established under paragraph (1) 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 632(p)(5) of this title.

**(3) Provision of data**

Upon 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 subsection.

**(4) Penalties**

In addition to the penalties described in section 645(d) of this title, any small business concern that is determined by the Administrator to have misrepresented the status of that concern as a ''HUBZone small business concern'' for purposes of this section, shall be subject to—

(A) section 1001 of title 18; and

(B) sections 3729 through 3733 of title 31.

**(d) Authorization of appropriations**

There is authorized to be appropriated to carry out the program established by this section $10,000,000 for each of fiscal years 2004 through 2006.

(Pub. L. 85–536, § 2[31], as added Pub. L. 105–135, title VI, § 602(b)(1)(B), Dec. 2, 1997, 111 Stat. 2629; amended Pub. L. 106–554, § 1(a)(9) [title V, § 503(b), title VI, § 612(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–695, 2763A–699; Pub. L. 108–447, div. K, title I, §§ 153, 154, Dec. 8, 2004, 118 Stat. 3458.)

REFERENCES IN TEXT

The Javits-Wagner-O'Day Act, referred to in subsec. (b)(4), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of Title 41, Public Contracts. For complete classification of this Act to the Code, see Tables.

PRIOR PROVISIONS

A prior section 2[31] of Pub. L. 85–536 was renumbered section 2[37] and is set out as a note under section 631 of this title.

AMENDMENTS

2004—Subsec. (b)(3)(C), (D). Pub. L. 108–447, § 153, which directed amendment of par. (3) by redesignating subpar. (C) as (D) and adding a new subpar. (C) at the end, was executed by making the redesignation as directed but by adding the new subpar. (C) after subpar. (B) to reflect the probable intent of Congress.

Subsec. (d). Pub. L. 108–447, § 154, substituted ''2004 through 2006'' for ''2001 through 2003''.

2000—Subsec. (b)(3). Pub. L. 106–554, § 1(a)(9) [title VI, § 612(a)], designated existing provisions as subpar. (A), inserted heading, substituted ''Subject to subparagraph (B), in any'' for ''In any'', and added subpars. (B) and (C).

Subsec. (d). Pub. L. 106–554, § 1(a)(9) [title V, § 503(b)], added subsec. (d).

EFFECTIVE DATE

Section effective Oct. 1, 1997, see section 3 of Pub. L. 105–135, set out as an Effective Date of 1997 Amendment note under section 631 of this title.

INITIAL LIMITED APPLICABILITY

Pub. L. 105–135, title VI, § 602(b)(2), Dec. 2, 1997, 111 Stat. 2631, as amended by Pub. L. 106–113, div. B, § 1000(a)(5) [title II, § 212], Nov. 29, 1999, 113 Stat. 1536, 1501A–295, provided that: ''During the period beginning on the date of enactment of this Act [Dec. 2, 1997] and ending on September 30, 2000, section 31 of the Small Business Act [15 U.S.C. 657a] (as added by paragraph (1) of this subsection) shall apply only to procurements by—

''(A) the Department of Defense;

''(B) the Department of Agriculture;

''(C) the Department of Health and Human Services;

''(D) the Department of Transportation;

''(E) the Department of Energy;

''(F) the Department of Housing and Urban Development;

''(G) the Environmental Protection Agency;

''(H) the National Aeronautics and Space Administration;

''(I) the General Services Administration;

''(J) the Department of Veterans Affairs;

''(K) the Department of Commerce;

''(L) the Department of Justice; and

''(M) the Department of State.''

REPORT

Section 606 of Pub. L. 105–135 provided that: ''Not later than March 1, 2002, the Administrator shall submit to the Committees a report on the implementation of the HUBZone program established under section 31 of the Small Business Act [15 U.S.C. 657a] (as added by section 602(b) of this title) and the degree to which the HUBZone program has resulted in increased employment opportunities and an increased level of investment in HUBZones (as defined in section 3(p) of the Small Business Act (15 U.S.C. 632(p)), as added by section 602(a) of this title).''

## § 657b. Veterans programs

### (a) 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 for Veterans Business Development (in this section referred to as the ''Associate Administrator'') appointed under section 633(b)(1) of this title.

### (b) Associate Administrator for Veterans Business Development

The Associate Administrator—

(1) shall be an appointee in the Senior Executive Service;

(2) 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. The Associate Administrator shall act as an ombudsman for full consideration of veterans in all programs of the Administration; and

(3) shall report to and be responsible directly to the Administrator.

### (c) Authorization of appropriations

There are authorized to be appropriated to carry out this section—

(1) $1,500,000 for fiscal year 2005; and

(2) $2,000,000 for fiscal year 2006.

(Pub. L. 85–536, § 2[32], as added Pub. L. 106–50, title II, § 201(b)(2), Aug. 17, 1999, 113 Stat. 235; amended Pub. L. 108–447, div. K, title I, § 145, Dec. 8, 2004, 118 Stat. 3455.)

PRIOR PROVISIONS

A prior section 2[32] of Pub. L. 85–536 was renumbered section 2[37] and is set out as a note under section 631 of this title.

AMENDMENTS

2004—Subsec. (c). Pub. L. 108–447 added subsec. (c).

CONGRESSIONAL FINDINGS

Pub. L. 106–50, title I, § 101, Aug. 17, 1999, 113 Stat. 234, provided that: ''Congress finds the following:

''(1) Veterans of the United States Armed Forces have been and continue to be vital to the small business enterprises of the United States.

''(2) In serving the United States, veterans often faced great risks to preserve the American dream of freedom and prosperity.

''(3) The United States has done too little to assist veterans, particularly service-disabled veterans, in playing a greater role in the economy of the United States by forming and expanding small business enterprises.

''(4) Medical advances and new medical technologies have made it possible for service-disabled veterans to play a much more active role in the formation and expansion of small business enterprises in the United States.

''(5) The United States must provide additional assistance and support to veterans to better equip them to form and expand small business enterprises, thereby enabling them to realize the American dream that they fought to protect.''

CONGRESSIONAL PURPOSE

Pub. L. 106–50, title I, § 102, Aug. 17, 1999, 113 Stat. 234, provided that: ''The purpose of this Act [see Short Title of 1999 Amendments note set out under section 631 of this title] is to expand existing and establish new assistance programs for veterans who own or operate small businesses. This Act accomplishes this purpose by—

''(1) expanding the eligibility for certain small business assistance programs to include veterans;

''(2) directing certain departments and agencies of the United States to take actions that enhance small business assistance to veterans; and

''(3) establishing new institutions to provide small business assistance to veterans or to support the institutions that provide such assistance.''

ADVISORY COMMITTEE ON VETERANS BUSINESS AFFAIRS

Pub. L. 106–50, title II, § 203, Aug. 17, 1999, 113 Stat. 239, as amended by Pub. L. 108–447, div. K, title I, § 143(b), Dec. 8, 2004, 118 Stat. 3455, provided that:

''(a) IN GENERAL.—There is established an advisory committee to be known as the 'Advisory Committee on Veterans Business Affairs' (in this section referred to as the 'Committee'), which shall serve as an independent source of advice and policy recommendations to—

''(1) the Administrator of the Small Business Administration (in this section referred to as the 'Administrator');

''(2) the Associate Administrator for Veterans Business Development of the Small Business Administration;

''(3) the Congress;

''(4) the President; and

''(5) other United States policymakers.

''(b) MEMBERSHIP.—

''(1) IN GENERAL.—The Committee shall be composed of 15 members, of whom—

''(A) eight shall be veterans who are owners of small business concerns (within the meaning of the term under section 3 of the Small Business Act (15 U.S.C. 632)); and

''(B) seven shall be representatives of veterans organizations.

''(2) APPOINTMENT.—

''(A) IN GENERAL.—The members of the Committee shall be appointed by the Administrator in accordance with this section.

''(B) INITIAL APPOINTMENTS.—Not later than 90 days after the date of the enactment of this Act [Aug. 17, 1999], the Administrator shall appoint the initial members of the Committee.

''(3) POLITICAL AFFILIATION.—Not more than eight members of the Committee shall be of the same political party as the President.

''(4) PROHIBITION ON FEDERAL EMPLOYMENT.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), no member of the Committee may serve as an officer or employee of the United States.

''(B) EXCEPTION.—A member of the Committee who accepts a position as an officer or employee of the United States after the date of the member's appointment to the Committee may continue to serve on the Committee for not more than 30 days after such acceptance.

''(5) TERM OF SERVICE.—

''(A) IN GENERAL.—Subject to subparagraph (B), the term of service of each member of the Committee shall be 3 years.

''(B) TERMS OF INITIAL APPOINTEES.—As designated by the Administrator at the time of appointment, of the members first appointed—

''(i) six shall be appointed for a term of 4 years; and

''(ii) five shall be appointed for a term of 5 years.

''(6) VACANCIES.—The Administrator shall fill any vacancies on the membership of the Committee not later than 30 days after the date on which such vacancy occurs.

''(7) CHAIRPERSON.—

''(A) IN GENERAL.—The members of the Committee shall elect one of the members to be Chairperson of the Committee.

''(B) VACANCIES IN OFFICE OF CHAIRPERSON.—Any vacancy in the office of the Chairperson of the Committee shall be filled by the Committee at the first meeting of the Committee following the date on which the vacancy occurs.

''(c) DUTIES.—The duties of the Committee shall be the following:

''(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 the departments and agencies of the United States 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.

''(5) In cooperation with the National Veterans Business Development 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 Committee may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Committee considers advisable to carry out its duties.

''(2) INFORMATION FROM FEDERAL AGENCIES.—Upon request of the Chairperson of the Committee, the head of any department or agency of the United States shall furnish such information to the Committee as the Committee considers to be necessary to carry out its duties.

''(3) USE OF MAILS.—The Committee may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

''(4) GIFTS.—The Committee may accept, use, and dispose of gifts or donations of services or property.

''(e) MEETINGS.—

''(1) IN GENERAL.—The Committee shall meet, not less than three times per year, at the call of the Chairperson or at the request of the Administrator.

''(2) LOCATION.—Each meeting of the full Committee shall be held at the headquarters of the Small Business Administration located in Washington, District of Columbia. The Administrator shall provide suitable meeting facilities and such administrative support as may be necessary for each full meeting of the Committee.

''(3) TASK GROUPS.—The Committee may, from time-to-time, establish temporary task groups as may be necessary in order to carry out its duties.

''(f) COMPENSATION AND EXPENSES.—

''(1) NO COMPENSATION.—Members of the Committee shall serve without compensation for their service to the Committee.

''(2) EXPENSES.—The members of the Committee shall be reimbursed for travel and subsistence expenses in accordance with section 5703 of title 5, United States Code.

''(g) REPORT.—Not later than 30 days after the end of each fiscal year beginning after the date of the enactment of this section [Aug. 17, 1999], the Committee shall transmit to the Congress and the President a report describing the activities of the Committee and any recommendations developed by the Committee for the promotion of small business concerns owned and controlled by veterans.

''(h) TERMINATION.—The Committee shall terminate its business on September 30, 2006.''

SCORE PROGRAM

Pub. L. 106–50, title III, § 301, Aug. 17, 1999, 113 Stat. 242, provided that:

''(a) IN GENERAL.—The Administrator of the Small Business Administration shall enter into a memorandum of understanding with the Service Core of Retired Executives (described in section 8(b)(1)(B) of the Small Business Act (15 U.S.C. 637(b)(1)(B)) and in this section referred to as 'SCORE') to provide for the following:

''(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 assistance of SCORE in the [sic] establishing and 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.

''(3) The collection of statistics concerning services provided by SCORE to veterans, including service-disabled veterans, for inclusion in each annual report published by the Administrator under section 4(b)(2)(B) of the Small Business Act (15 U.S.C. 633(b)(2)(B)).

''(b) RESOURCES.—The Administrator shall provide to SCORE such resources as the Administrator determines necessary for SCORE to carry out the requirements of the memorandum of understanding specified in paragraph (1).''

ENTREPRENEURIAL ASSISTANCE

Pub. L. 106–50, title III, § 302, Aug. 17, 1999, 113 Stat. 242, provided that: ''Not later than 180 days after the date of the enactment of this Act [Aug. 17, 1999], the Secretary of Veterans Affairs, the Administrator of the Small Business Administration, and the head of the association formed pursuant to section 21(a)(3)(A) of the Small Business Act (15 U.S.C. 648(a)(3)(A)) shall enter into a memorandum of understanding with respect to entrepreneurial assistance to veterans, including service-disabled veterans, through Small Business Development Centers (described in section 21 of the Small Business Act (15 U.S.C. 648)) and facilities of the Department of Veterans Affairs. Such assistance shall include the following:

''(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.

''(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 such list to each department and agency of the United States. Such list shall be delivered in hard copy and electronic form and shall include the name and address of each such small business concern and the products or services that it provides.''

ANNUAL REPORT OF ADMINISTRATOR

Pub. L. 106–50, title VI, § 603, Aug. 17, 1999, 113 Stat. 248, provided that: ''The Administrator of the Small Business Administration shall transmit annually to the Committees on Small Business and Veterans Affairs of the House of Representatives and the Senate [Committee on Small Business of Senate now Committee on Small Business and Entrepreneurship of Senate] 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, which shall include information on—

''(1) the availability of Small Business Administration programs for such small business concerns and the degree of utilization of such programs by such small business concerns during the preceding 12-month period, including statistical information on such utilization as compared to the small business community as a whole;

''(2) the percentage and dollar value of Federal contracts awarded to such small business concerns during the preceding 12-month period, based on the data collected pursuant to section 604(d) [set out below]; and

''(3) proposals to improve the access of such small business concerns to the assistance made available by the United States.''

DATA AND INFORMATION COLLECTION

Pub. L. 106–50, title VI, § 604, Aug. 17, 1999, 113 Stat. 249, provided that:

''(a) INFORMATION ON FEDERAL PROCUREMENT PRACTICES.—The Administrator of the Small Business Administration shall, for each fiscal year—

''(1) collect information concerning the procurement practices and procedures of each department and agency of the United States having procurement authority;

''(2) publish and disseminate such information to procurement officers in all Federal agencies; and

''(3) make such information available to any small business concern requesting such information.

''(b) IDENTIFICATION OF SMALL BUSINESS CONCERNS OWNED BY ELIGIBLE VETERANS.—Each fiscal year, the Secretary of Veterans Affairs shall, in consultation with the Assistant Secretary of Labor for Veterans' Employment and Training and the Administrator of the Small Business Administration, identify small business concerns owned and controlled by veterans in the United States. The Secretary shall inform each small business concern identified under this paragraph that information on Federal procurement is available from the Administrator.

''(c) SELF-EMPLOYMENT OPPORTUNITIES.—The Secretary of Labor, the Secretary of Veterans Affairs, and the Administrator of the Small Business Administration 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. The memorandum of understanding shall include recommendations for expanding existing programs or establishing new programs to provide such services or assistance to such veterans.

''(d) DATA COLLECTION REQUIRED.—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 be modified to collect data regarding the percentage and dollar value of prime contracts and subcontracts awarded to small business concerns owned and controlled by veterans and small business concerns owned and controlled by service-disabled veterans.''

DEFINITIONS

Pub. L. 106–50, title I, § 103(b), Aug. 17, 1999, 113 Stat. 235, provided that: ''In this Act [see Short Title of 1999 Amendments note set out under section 631 of this title], the definitions contained in section 3(q) of the Small Business Act [15 U.S.C. 632(q)], as added by this section, apply.''

## § 657c. National Veterans Business Development Corporation

### (a) Establishment

There is established a federally chartered corporation to be known as the National Veterans Business Development Corporation (in this section referred to as the ''Corporation'') which shall be incorporated under the laws of the District of Columbia and which shall have the powers granted in this section. Notwithstanding any other provision of law, the Corporation is a private entity and is not an agency, instrumentality, authority, entity, or establishment of the United States Government.

### (b) 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, including service-disabled veterans, with the formation and expan-

sion of small business concerns by working with and organizing public and private resources, including those of the Small Business Administration, the Department of Veterans Affairs, the Department of Labor, the Department of Commerce, the Department of Defense, the Service Corps of Retired Executives (described in section 637(b)(1)(B) of this title), the Small Business Development Centers (described in section 648 of this title), and the business development staffs of each department and agency of the United States.

**(c) Board of Directors**

**(1) In general**

The management of the Corporation shall be vested in a Board of Directors composed of nine voting members and three nonvoting ex officio members.

**(2) Appointment of voting members**

The President shall, after considering recommendations which shall be proposed by the Chairmen and Ranking Members of the Committees on Small Business and the Committees on Veterans Affairs of the House of Representatives and the Senate, appoint United States citizens to be voting members of the Board, not more than five of whom shall be members of the same political party.

**(3) Ex officio members**

The Administrator of the Small Business Administration, the Secretary of Defense, and the Secretary of Veterans Affairs shall serve as the nonvoting ex officio members of the Board of Directors.

**(4) Initial appointments**

The initial members of the Board of Directors shall be appointed not later than 60 days after August 17, 1999.

**(5) Chairperson**

The members of the Board of Directors appointed under paragraph (2) shall elect one such member to serve as chairperson of the Board of Directors for a term of 2 years.

**(6) Terms of appointed members**

**(A) In general**

Each member of the Board of Directors appointed under paragraph (2) shall serve a term of 6 years, except as provided in subparagraph (B).

**(B) Terms of initial appointees**

As designated by the President at the time of appointment, of the members first appointed—

(i) three shall be for a term of 2 years; and

(ii) three shall be for a term of 4 years.

**(C) Unexpired terms**

Any 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 has taken office.

**(7) Vacancies**

Any 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 of the Small Business Administration or the Secretary of Veterans Affairs, and pending the appointment of a successor, an acting appointee for such vacancy may serve as an ex officio member.

**(8) 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 such service.

**(9) Impartiality and nondiscrimination**

The Board of Directors shall administer the affairs of the Corporation fairly and impartially and without discrimination.

**(10) 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.

**(11) Quorum**

Five voting members of the Board of Directors shall constitute a quorum, but a lesser number may hold hearings.

**(d) Corporate powers**

On October 1, 1999, the Corporation shall become a body corporate and as such shall have the authority to do the following:

(1) To adopt and use a corporate seal.

(2) To have succession until dissolved by an Act of Congress.

(3) To make contracts or grants.

(4) To sue and be sued, and to file and defend against lawsuits in State or Federal court.

(5) To appoint, through the actions of its Board of Directors, officers and employees of the Corporation, to define their duties and responsibilities, fix their compensations, and to dismiss at will such officers or employees.

(6) To prescribe, through the actions of its Board of Directors, bylaws not inconsistent with Federal law and the law of the State of incorporation, 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 its Board of Directors or duly authorized officers, all powers specifically granted by the provisions of this section, and such incidental powers as shall be 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.

**(e) 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 such funds are disbursed under paragraph (2).

**(2) Disbursement of funds**

Funds of the Corporation may be disbursed only for purposes that are—

(A) approved by the Board of Directors by a recorded vote with a quorum present; and

(B) in accordance with the purposes of the Corporation as specified in subsection (b) of this section.

**(f) Network of information and assistance centers**

In carrying out the purpose described in subsection (b) of this section, the Corporation shall establish and maintain a network of information and assistance centers for use by veterans and the public.

**(g) Annual report**

On or before October 1 of each year, the Board of Directors shall transmit a report to the President and the Congress describing the activities and accomplishments of the Corporation for the preceding year and 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.

**(h) Assumption of duties of advisory committee**

On October 1, 2006, the Corporation established under this section shall assume the duties, responsibilities, and authority of the Advisory Committee on Veterans Affairs established under section 203 of this Act.[1]

**(i) Use of mails**

The Corporation may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

**(j) 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**

The members of the Advisory Board shall serve without compensation, shall meet in the District of Columbia no less than quarterly, and shall be appointed by the Board of Directors as follows:

**(A) Private sector members**

The Corporation shall appoint not less than seven 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.

**(B) Public sector members**

The Corporation shall invite public sector members to serve at the discretion of their departments or agencies and shall—

(i) encourage the participation of the Under Secretary of Defense for Personnel and Readiness;

(ii) encourage the participation of two officers from each branch of the Armed Forces to represent the Training Commands of their branch; and

(iii) seek the participation and guidance of the Assistant Secretary of Labor for Veterans' Employment and Training.

**(k) Authorization of appropriations**

**(1) In general**

Subject to paragraph (2), there are authorized to be appropriated to the Corporation to carry out this section—

(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 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 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 Corporation shall institute and implement a plan to raise private funds and become a self-sustaining corporation.

(Pub. L. 85–536, § 2[33], as added Pub. L. 106–50, title II, § 202(a), Aug. 17, 1999, 113 Stat. 236; amended Pub. L. 106–554, § 1(a)(9) [title VIII, § 808], Dec. 21, 2000, 114 Stat. 2763, 2763A–706; Pub. L. 108–447, div. B, title VI, § 636, div. K, title I, §§ 143(a), 146, Dec. 8, 2004, 118 Stat. 2922, 3455.)

REFERENCES IN TEXT

Section 203 of this Act, referred to in subsec. (h), probably means section 203 of Pub. L. 106–50, title II, Aug. 17, 1999, 113 Stat. 239, which is set out as a note under section 657b of this title.

CODIFICATION

August 17, 1999, referred to in subsec. (c)(4), was in the original ''the date of enactment of this Act'', which was translated as meaning the date of enactment of Pub. L. 106–50, which enacted this section, to reflect the probable intent of Congress.

AMENDMENTS

2004—Subsec. (a). Pub. L. 108–447, §§ 146 and 636, amended subsec. (a) identically, inserting at end ''Not-

[1] See References in Text note below.

withstanding any other provision of law, the Corporation is a private entity and is not an agency, instrumentality, authority, entity, or establishment of the United States Government.''

Subsec. (h). Pub. L. 108–447, § 143(a), substituted ''October 1, 2006'' for ''October 1, 2004''.

2000—Subsec. (k)(1). Pub. L. 106–554, § 1(a)(9) [title VIII, § 808(1)], added par. (1) and struck out heading and text of former par. (1). Text read as follows: ''Subject to paragraph (2), there are authorized to be appropriated to the Corporation to carry out this section—

''(A) $2,000,000 for fiscal year 2000;

''(B) $4,000,000 for fiscal year 2001;

''(C) $4,000,000 for fiscal year 2002; and

''(D) $2,000,000 for fiscal year 2003.''

Subsec. (k)(2)(A). Pub. L. 106–554, § 1(a)(9) [title VIII, § 808(2)], substituted ''2002'' for ''2001'' in heading and text.

Subsec. (k)(2)(B). Pub. L. 106–554, § 1(a)(9) [title VIII, § 808(3)], substituted ''2003 or 2004'' for ''2002 or 2003''.

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

GENERAL ACCOUNTING OFFICE REPORT

Pub. L. 106–50, title II, § 202(b), Aug. 17, 1999, 113 Stat. 239, provided that not later than 180 days after the last day of the second fiscal year beginning after the date on which the initial members of the Board of Directors of the National Veterans Business Development Corporation were appointed under subsec. (c) of this section, the Comptroller General of the United States was to evaluate the effectiveness of the National Veterans Business Development Corporation in carrying out the purposes under subsec. (b) of this section, and submit to Congress a report on the results of that evaluation.

## § 657d. Federal and State Technology Partnership Program

### (a) Definitions

In this section and section 657e of this title, the following definitions apply:

#### (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 providing advice and assistance on matters described in section 657e(c)(2)(B) of this title to small business concerns to guide them through the SBIR and STTR program process, from application to award and successful completion of each phase of the program.

#### (3) FAST program

The term ''FAST program'' means the Federal and State Technology Partnership Program established under this section.

#### (4) Mentor

The term ''mentor'' means an individual described in section 657e(c)(2) of this title.

#### (5) Mentoring Network

The term ''Mentoring Network'' means an association, organization, coalition, or other entity (including an individual) that meets the requirements of section 657e(c) of this title.

#### (6) Recipient

The term ''recipient'' means a person that receives an award or becomes party to a cooperative agreement under this section.

#### (7) SBIR program

The term ''SBIR program'' has the same meaning as in section 638(e)(4) of this title.

#### (8) State

The term ''State'' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

#### (9) STTR program

The term ''STTR program'' has the same meaning as in section 638(e)(6) of this title.

### (b) Establishment of Program

The Administrator shall establish a program to be known as the Federal and State Technology Partnership 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 program 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 set forth in paragraph (2), in order 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 program, 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 Administration, or other entities that are knowledgeable about the SBIR and STTR programs as

good candidates for the SBIR and STTR programs, and that would benefit from mentoring, in accordance with section 657e of this title;

(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 program funding.

**(2) Selection considerations**

In making awards or entering into cooperative agreements under this section, the Administrator and the SBIR program managers referred to in paragraph (1)—

(A) may only consider 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 the SBIR program; 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 business 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 small business concerns—

(I) owned and controlled by women;

(II) owned and controlled by minorities; and

(III) 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 1 fiscal year.

**(4) Process**

Proposals and applications for assistance under this section shall be in such form and subject to such procedures as the Administrator shall establish. The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations identified in paragraph (2)(B).

**(d) Cooperation and coordination**

In carrying out the FAST program under this section, the Administrator shall cooperate and coordinate with—

(1) Federal agencies required by section 638 of this title to have an SBIR program; 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 (as established under section 1862g of title 42);

(C) State science and technology councils; and

(D) representatives of technology-based small business concerns.

**(e) Administrative requirements**

**(1) Competitive basis**

Awards and cooperative agreements under this section shall be made or entered into, as applicable, on a competitive basis.

**(2) Matching requirements**

**(A) 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) 50 cents for each Federal dollar, 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 (as described in section 638(e)(4)(A) of this title);

(ii) except as provided in subparagraph (B), 1 dollar for each Federal dollar, in the case of a recipient that will serve small business concerns located in one of the 16 States receiving the greatest number of such SBIR first phase awards; and

(iii) except as provided in subparagraph (B), 75 cents for each Federal dollar, in the case of a recipient that will serve small business concerns located in a State that is not described in clause (i) or (ii) that is receiving such SBIR first phase awards.

**(B) Low-income areas**

The non-Federal share of the cost of the activity carried out using an award or under a cooperative agreement under this section shall be 50 cents for each Federal dollar that will be directly allocated by a recipient described in subparagraph (A) to serve small business concerns located in a qualified census tract, as that term is defined in section 42(d)(5)(C)(ii) of title 26. Federal dollars not so allocated by that recipient shall be subject to the matching requirements of subparagraph (A).

**(C) Types of funding**

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, except that no such costs or contributions may be derived from funds from any other Federal program.

**(D) Rankings**

For purposes of subparagraph (A), the Administrator shall reevaluate the ranking of a State once every 2 fiscal years, beginning with fiscal year 2001, based on the most recent statistics compiled by the Administrator.

**(3) Duration**

Awards may be made or cooperative agreements entered into under this section for multiple years, not to exceed 5 years in total.

**(f) Reports**

**(1) Initial report**

Not later than 120 days after December 21, 2000, the Administrator shall prepare and submit 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 a report, which shall include, with respect to the FAST program, including Mentoring Networks—

(A) a description of the structure and procedures of the program;

(B) a management plan for the program; and

(C) a description of the merit-based review process to be used in the program.

**(2) Annual reports**

The Administrator shall submit an annual report 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 regarding—

(A) the number and amount of awards provided and cooperative agreements entered into under the FAST program during the preceding year;

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

(C) the Mentoring Networks and the mentoring database, as provided for under section 657e of this title, including—

(i) the status of the inclusion of mentoring information in the database required by section 638(k) of this title; and

(ii) the status of the implementation and description of the usage of the Mentoring Networks.

**(g) Reviews by Inspector General**

**(1) In general**

The Inspector General of the Administration shall conduct a review of—

(A) the extent to which recipients under the FAST program are measuring the performance of the activities being conducted and the results of such measurements; and

(B) the overall management and effectiveness of the FAST program.

**(2) Report**

During the first quarter of fiscal year 2004, the Inspector General of the Administration shall submit a report 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 on the review conducted under paragraph (1).

**(h) Program levels**

**(1) In general**

There is authorized to be appropriated to carry out the FAST program, including Mentoring Networks, under this section and section 657e 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 Administration to carry out section 657e(d) of this title.

**(i) Termination**

The authority to carry out the FAST program under this section shall terminate on September 30, 2005.

(Pub. L. 85–536, § 2[34], as added Pub. L. 106–554, § 1(a)(9) [title I, § 111(b)(2)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674; amended Pub. L. 107–50, § 8, Oct. 15, 2001, 115 Stat. 265.)

PRIOR PROVISIONS

A prior section 2[34] of Pub. L. 85–536 was renumbered section 2[37] and is set out as a note under section 631 of this title.

AMENDMENTS

2001—Subsec. (c)(2)(B)(vi). Pub. L. 107–50, § 8(a), added cl. (vi).

Subsec. (c)(4). Pub. L. 107–50, § 8(b), inserted at end ''The Administrator shall promulgate regulations establishing standards for the consideration of proposals under paragraph (2), including standards regarding each of the considerations identified in paragraph (2)(B).''

CHANGE OF NAME

Committee on Small Business of Senate changed to Committee on Small Business and Entrepreneurship of Senate. See Senate Resolution No. 123, One Hundred Seventh Congress, June 29, 2001.

FINDINGS

Pub. L. 106–554, § 1(a)(9) [title I, § 111(a)], Dec. 21, 2000, 114 Stat. 2763, 2763A–674, provided that: ''Congress finds that—

''(1) programs to foster economic development among small high-technology firms vary widely among the States;

''(2) States that do not aggressively support the development of small high-technology firms, including participation by small business concerns in the SBIR program, are at a competitive disadvantage in establishing a business climate that is conducive to technology development; and

''(3) building stronger national, State, and local support for science and technology research in these disadvantaged States will expand economic opportunities in the United States, create jobs, and increase the competitiveness of the United States in the world market.''

## § 657e. Mentoring Networks

**(a) Findings**

Congress finds that—

(1) the SBIR and STTR programs create jobs, increase capacity for technological innovation, and boost international competitiveness;

(2) increasing the quantity of applications from all States to the SBIR and STTR programs would enhance competition for such awards and the quality of the completed projects; and

(3) mentoring is a natural complement to the FAST program of reaching out to new companies regarding the SBIR and STTR programs as an effective and low-cost way to improve the likelihood that such companies will succeed in such programs in developing and commercializing their research.

**(b) Authorization for Mentoring Networks**

The recipient of an award or participant in a cooperative agreement under section 657d of this title may use a reasonable amount of such assistance for the establishment of a Mentoring Network under this section.

**(c) Criteria for Mentoring Networks**

A Mentoring Network established using assistance under section 657d of this title shall—

(1) 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 section 657d(c)(1)(E)(ii) of this title as potential candidates for the SBIR or STTR programs;

(2) identify volunteer mentors who—

(A) are persons associated with a small business concern that has successfully completed one or more SBIR or STTR funding agreements; and

(B) have agreed to guide small business concerns through all stages of the SBIR or STTR program 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 SBIR and STTR programs;

(3) have experience working with small business concerns participating in the SBIR and STTR programs;

(4) contribute information to the national database referred to in subsection (d) of this section; and

(5) agree to reimburse volunteer mentors for out-of-pocket expenses related to service as a mentor under this section.

**(d) Mentoring database**

The Administrator shall—

(1) include in the database required by section 638(k)(1) of this title, in cooperation with the SBIR, STTR, and FAST programs, information on Mentoring Networks and mentors participating under this section, including a description of their areas of expertise;

(2) work cooperatively with Mentoring Networks to maintain and update the database;

(3) take such action as may be necessary to aggressively promote Mentoring Networks under this section; and

(4) fulfill the requirements of this subsection either directly or by contract.

(Pub. L. 85–536, § 2[35], as added Pub. L. 106–554, § 1(a)(9) [title I, § 112], Dec. 21, 2000, 114 Stat. 2763, 2763A–680.)

## § 657f. Procurement program for small business concerns owned and controlled by service-disabled veterans

**(a) Sole source contracts**

In accordance with this section, a contracting officer may award a sole source contract to any small business concern owned and controlled by service-disabled veterans if—

(1) such concern is determined to be a responsible contractor with respect to performance of such contract opportunity and 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;

(2) 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 standard industrial classification code for manufacturing; or

(B) $3,000,000, in the case of any other contract opportunity; and

(3) in the estimation of the contracting officer, the contract award can be made at a fair and reasonable price.

**(b) Restricted competition**

In accordance with this section, a contracting officer may award contracts 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 not less than 2 small business concerns owned and controlled by service-disabled veterans will submit offers and that the award can be made at a fair market price.

**(c) Relationship to other contracting preferences**

A procurement may not be made from a source on the basis of a preference provided under subsection (a) or (b) of this section if the procurement would otherwise be made from a different source under section 4124 or 4125 of title 18 or the Javits-Wagner-O'Day Act (41 U.S.C. 46 et seq.).

**(d) Enforcement; penalties**

Rules similar to the rules of paragraphs (5) and (6) of section 637(m) of this title shall apply for purposes of this section.

**(e) Contracting officer**

For purposes of this section, the term ''contracting officer'' has the meaning given such term in section 423(f)(5) of title 41.

(Pub. L. 85–536, § 2[36], as added Pub. L. 108–183, title III, § 308, Dec. 16, 2003, 117 Stat. 2662.)

REFERENCES IN TEXT

The Javits-Wagner-O'Day Act, referred to in subsec. (c), is act June 25, 1938, ch. 697, 52 Stat. 1196, as amended, which is classified to sections 46 to 48c of Title 41,

Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 46 of Title 41 and Tables.

PRIOR PROVISIONS

A prior section 2[36] of Pub. L. 85–536 was renumbered section 2[37] and is set out as a note under section 631 of this title.

### § 657g. Participation in federally funded projects

Any small business concern that is certified, or otherwise meets the criteria for participation in any program under section 637(a) of this title, shall not be required by any State, or political subdivision thereof, to meet additional criteria or certification, unrelated to the capability to provide the requested products or services, in order to participate as a small disadvantaged business in any program or project that is funded, in whole or in part, by the Federal Government.

(Pub. L. 108–447, div. K, title I, § 155, Dec. 8, 2004, 118 Stat. 3458.)

CODIFICATION

Section was enacted as part of the Small Business Reauthorization and Manufacturing Assistance Act of 2004, and also as part of the Consolidated Appropriations Act, 2005, and not as part of the Small Business Act which comprises this chapter.

## CHAPTER 14B—SMALL BUSINESS INVESTMENT PROGRAM

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